

363

June 7, 1985

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of )  
 )  
COMMONWEALTH EDISON COMPANY ) Docket Nos. 50-4560L  
 ) 50-4570L  
(Braidwood Nuclear Power )  
Station, Units 1 and 2) )

DOCKETED  
USNRC

'85 JUN 10 A11:49

APPLICANT'S RESPONSE IN OPPOSITION TO  
INTERVENORS' MOTION TO ADMIT AMENDED  
QUALITY ASSURANCE CONTENTION

OFFICE OF SECRETARY  
DOCKETING & SERVICE  
BRANCH

On March 7, 1985 intervenors Bridget Little Rorem, et al. moved this Atomic Safety & Licensing Board ("Licensing Board") to admit a late-filed contention challenging the overall adequacy of the construction quality assurance and quality control ("QA") programs at the Braidwood Nuclear Station. Applicant and the NRC Staff opposed the contention as a generalized attack on Applicant's QA program that failed to meet the basis and specificity requirements of 10 C.F.R. § 2.714(b). The Licensing Board, in its Order of April 17, 1985, also found the contention lacking in those respects. Applicant and the Staff also argued that intervenors had failed to meet the standards of 10 C.F.R. § 2.714(a) governing the admission of late-filed contentions. The Board did not reach a final determination regarding the admissibility of the Contention. Although it held the contention deficient, the Board found reason for concern

8506110522 850607  
PDR ADOCK 05000456  
G PDR

DS03

about the QA program at the Braidwood Station in the testimony of James G. Keppler, the NRC Region III Administrator, in the Byron hearings, cited by Intervenors. The Board therefore allowed Intervenors to depose Mr. Keppler and thereafter to amend their QA contention. The Board clearly set out the standards that the amended late-filed contention would have to meet. (Order at 41-42.)

On May 24, 1985, Intervenors filed a "Motion to Admit Amended Quality Assurance Contention" ("Motion"). Applicant opposes admission of Intervenors' amended QA contention. First, Intervenors have not cured the lack of basis and specificity inherent in the original contention. Intervenors have continued to mount a general attack on the overall adequacy of the construction QA program at Braidwood. They have added considerably to the bulk of the contention by listing numerous deficiencies in the QA program or its implementation cited by the NRC Staff in various inspection reports. The specific violations and deficiencies identified in these reports are not offered by Intervenors to establish contentions limited to those matters, e.g., the adequacy of the safety-related equipment installed by the on-site mechanical contractor. Rather, this example and the others referred to in the Contention are pleaded in an attempt to establish the basis for the singular thrust of their contention, namely, that a general breakdown and failure of Applicant's quality assurance program has occurred at Braidwood Station. (Motion, pp. 7-8.)

However, the list of deficiencies they set forth simply does not provide, as will be shown below, the basis for a contention that asserts an overall breakdown and failure of the Braidwood QA program. Second, Intervenors have not demonstrated that they meet the criteria for admission of a late-filed contention. Indeed, the amended contention makes it even clearer that they have not met these criteria. For these reasons the Licensing Board should deny Intervenors' Motion.

I. THE BASES FOR INTERVENORS' AMENDED CONTENTION HAVE NOT BEEN SET FORTH WITH REASONABLE SPECIFICITY.

A. Legal Requirements.

Intervenors must provide bases for their contentions which are reasonably specific in order that concrete issues for adjudication can be defined. See Gulf States Utilities Company (River Bend Station, Units 1 and 2), ALAB-444, 6 NRC 760, 769 (1977). Therefore, the bases need to be stated with sufficient specificity to put the Applicant and the Staff on notice as to what evidentiary presentations are needed in order to respond to the contention. Philadelphia Electric Company (Peach Bottom Atomic Power Station, Units 1 and 2), ALAB-216 8 AEC 13, 20 (1974); Philadelphia Electric Company (Limerick Generating Station, Units 1 and 2), LBP-82-43A, 15 NRC 1423, 1481 (1982); Illinois Power Company (Clinton Power Station, Unit 1), LBP-81-61, 14 NRC 1735, 1737 (1981).

It is especially important that the basis and specificity requirements of 10 C.F.R. § 2.714(b) be met with respect to a quality assurance contention alleging a general breakdown of the program. This is so because of the nature of quality assurance issues as articulated by the Atomic Safety and Licensing Appeal Board ("Appeal Board") in Union Electric Company (Callaway Plant, Unit 1), ALAB-740, 18 NRC 343 (1983). The Appeal Board pointed out that "[i]n any project even remotely approaching in magnitude and complexity of the erection of a nuclear power plant, there inevitably will be some construction defects tied to quality assurance lapses." 18 NRC at 346. Accordingly, the Commission's regulations do not require a demonstration of error-free construction, but "simply a finding of reasonable assurance that, as built, the facility can and will be operated without endangering the public health and safety."

Id. The Appeal Board continued:

Thus, in examining claims of quality assurance deficiencies, one must look to the implication of of those deficiencies in terms of safe plant operation.

Obviously, this inquiry necessitates careful consideration of whether all ascertained construction errors have been cured. Even if this is established to be the case, however, there may remain a question whether there has been a breakdown in quality assurance procedures of sufficient dimensions to raise legitimate doubts as to the overall integrity of the facility and its safety-related structures and components. A demonstration of a pervasive failure to carry out the quality assurance program might well stand in the way of the requisite safety finding.

Id.

Although the Appeal Board in Callaway was not articulating standards for the admission of a QA contention, the teaching of Callaway, nevertheless, is instructive for a determination of the kind of basis that an admissible contention challenging the overall adequacy of a QA program must provide. Such a contention must allege a pattern of deficiencies which if successfully litigated, would demonstrate a "pervasive failure" of the QA program such as to raise doubts about the overall integrity of the facility.

The Callaway rationale was applied to the admissibility of a QA contention by the Licensing Board in Philadelphia Electric Company (Limerick Generating Station, Units 1 and 2), LBP-83-39, 18 NRC 67 (1983). There the Licensing Board denied admission of a contention alleging "a pattern of faulty workmanship, inspection and supervision by the Applicant." 18 NRC at 88. The Intervenor had summarized problems listed in NRC Staff inspection reports which allegedly indicated a pattern of inadequate quality assurance performance. The Licensing Board stated that it had attempted to determine what the alleged pattern was and "what specific basis exists to support the allegation of a pattern." 18 NRC at 89. The Board concluded that no particular pattern was being alleged, but that the Intervenor was "merely relying on the fact that there are many deviations and non-compliances in NRC Staff and Applicant inspection reports over the many years of construction, and that

this shows inability of the Applicant to carry out a proper QA program." Id. The Board continued:

We agree . . . that the mere recitation of unrelated adverse findings in reports of inspections and audits performed by the Staff and Applicant does not supply information on what specifically would be litigated. It suggests a broad, unfocused, item by item cross-examination of very Staff and Applicant inspectors who report the problems and approved their resolution. This is to be contrasted with proceedings where particular allegations of specific patterns of QA/QC problems, often based on inspection reports, have been litigated. It is also in sharp contrast with supported allegations of particular existing construction defects.

Id.

In its April 17, 1985 Order setting the requirements for an acceptable amended QA contention by Intervenor, the Licensing Board showed itself fully cognizant of the rationale of Callaway and Limerick:

Intervenors' amended contention must set out the exact bases for each allegation asserted. At a minimum this includes a precise specification of each occurrence of an alleged QA/QC deficiency, the data on which each alleged deficiency is premised (e.g., NRC inspection reports), the particular overall unacceptable pattern(s) purported to exist when the allegedly related individual incidents are aggregated and an explanation of why each specified deficiency supports the overall unacceptable pattern under which it has been grouped. [Citation to Limerick] For example, when a group of specific QA/QC deficiencies can be shown by their bases to be apparently related to the same repeated root cause, this could form an unacceptable pattern. Order at 41.

The Board then referred to the Callaway standard of a pervasive breakdown which raises doubts about the overall

integrity of the facility and concluded: "Intervenors must supply an amended contention which, at this late stage, demonstrates clear and specific bases that significant QA/QC questions exist which rise to the level of this pertinent overall issue." (Order at 42.)

Under the rule of Mississippi Power & Light Company (Grand Gulf Nuclear Station, Units 1 and 2), ALAB-130, 6 AEC 423 (1973), the Licensing Board will not evaluate the merits of a contention when ruling on its admissibility. When the basis of a contention consists of extracts from documents, however, the Licensing Board may examine the documentation as a whole to determine whether Intervenors have fairly presented it. In Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit No. 1), LBP-83-76, 18 NRC 1266 (1983), intervenors proposed a contention challenging the efficacy of the Licensee's program to repair steam generator tubes. A subpart of this contention attacked the program's reliance on the addition of lithium to prevent intergranular stress corrosion cracking, citing as basis an attachment to the Staff's Safety Evaluation Report ("SER") indicating the questionable usefulness of this method. Licensee and the Staff argued that the contention subpart lacked basis, pointing to statements in the SER and a Licensee technical report indicating that the lithium addition was merely a backup feature of the program on which primary reliance was not placed. After examining these

documents, the Licensing Board rejected the contention subpart as lacking in basis because it was premised on an erroneous understanding of the details of the repair program. 18 NRC at 1279-80.

Similarly, when the sole basis of Intervenors' claim of a pervasive breakdown in a QA program is the Staff enforcement history at the facility, the Licensing Board should take a full and fair look at that history in evaluating their claim. Intervenors cannot demonstrate adequate basis for the existence of a systematic failure by presenting a selective and distorted picture. A claim of pervasive breakdown is inherently a claim about the whole QA program and cannot rest on incidents taken out of context. Such a view of the supporting record does not amount to evaluating the merits of the contention; it is merely an appropriate evaluation of the basis for the contention. Here, after the exceptional liberties accorded to Intervenors to establish their contention under the Board's April 17 Order, Intervenors can surely be held to a fair statement of the record on which they rely.

B. Analysis Of Intervenors' Amended Contention.

1. Intervenors' Presentation of The Staff Position.

Intervenors give a selective and misleading presentation of the expressed position of the NRC Staff on the Braidwood QA program, in order to suggest that the Staff

believes there are pervasive problems with the program.<sup>1/</sup> They rely chiefly on testimony given by Mr. Keppler in the Byron proceeding in August 1984 and on statements that Mr. Keppler made to a newspaper in February 1984. (Motion at 17.) Mr. Keppler stated that the Staff had serious quality assurance questions at Braidwood. He indicated that there had been hardware deficiencies at the plant and said he was not comfortable making the statement that Braidwood had been built properly. (Id.) Intervenors claim that such statements "reflect" the "overall serious and pervasive nature of Applicant's QA breakdown at Braidwood." (Id.) This is misleading.

At his deposition on May 24, 1985, Mr. Keppler testified that the statements he made in 1984 were based on two Inspection Reports, numbered 82-05 and 83-09, reporting the results of inspections conducted, respectively, in April through September of 1982 and in the Summer and Fall of 1983

---

<sup>1/</sup> For example, Intervenors repeatedly quote language from Mr. Keppler's February 2, 1983 cover letter transmitting Inspection Report 82-05, which formed the basis for the imposition of a civil penalty. Intervenors state that Mr. Keppler cited "a breakdown of your quality assurance (QA) program." (Motion at 30, 34, 37, 39-40, 41, 45 and 46.) In fact, Mr. Keppler's full statement (which, in fairness to Intervenors, they do quote twice) was quite different. He referred to "a breakdown of your quality assurance (QA) program as it relates to the installation and installation inspection of mechanical safety-related equipment." Thus, the breakdown identified by Staff was limited to one aspect of the work of one site contractor.

and January and February of 1984.<sup>2/</sup> Applicant does not dispute that in those inspections the Staff found some deficiencies in the implementation of QA programs by several site contractors which required extensive corrective action programs. It is the nature of an effective QA program, however, to remedy identified deficiencies and to right itself if it has begun to go off course. This is what happened at Braidwood. The inspection record is plain that 1984 saw the beginning of a significant improvement in the Braidwood QA program. Mr. Keppler testified at his deposition that by November 1984, when he gave another interview to the newspapers, his opinion had changed and he stated at that time that Applicant was doing everything he hoped it would do with respect to corrective actions concerning the quality of construction at Braidwood. (Tr. 267-271.)

---

<sup>2/</sup> Intervenors' presentation of the timing of these inspections is misleading. They complain that the Staff's adverse findings with respect to installation of mechanical equipment in Inspection Report 82-05 did not occur until February 2, 1983 when "much, if not most, of the safety-related hardware at Braidwood was already installed." (Motion at 3.) February 2, 1983, however, was only the date on which the official report issued. The actual inspection took place in April through September of 1982. The adverse findings were made known to the Applicant in exit interviews and enforcement conferences long before issuance of the report, and Applicant's responsive corrective actions were, in fact, initiated as early as September of 1982. Similarly, Intervenors complain that the Staff did not make the adverse findings contained in Inspection Report 83-09 until May 7, 1984. Again this is the date of issuance of the final report. The actual inspections took place in the Summer and Fall of 1983 and January and February of 1984. Again, adverse findings were made known to Applicant and responsive corrective actions were initiated long before issuance of the final report.

This changed opinion was based on the results of a review of Braidwood construction conducted by the Staff from January 1983 through June 1984. (Tr. 268.) The letter from Mr. Keppler transmitting the report of this inspection, known as SALP IV, stated:

During the first part of the SALP period, your performance with regard to identifying and implementing corrective actions to resolve known problems and nonconforming conditions was of significant concern to us. However, during the last part of the SALP period, your performance improved considerably and in most cases your corrective actions have been responsive and adequate. Overall, your regulatory performance within the SALP period showed an improving trend.

(Letter, Keppler to Reed, November 6, 1984, Applicant's Ex. 2 to Keppler deposition.)

This improving trend continued and was reflected in the Staff's Construction Appraisal Team (CAT) inspection, conducted in late 1984 and early 1985 "to evaluate the management control of construction activities and the quality of construction at nuclear plants." (Letter, Taylor to Reed, February 20, 1985, Ex. 10 to Motion.) Although the report found some deficiencies in the QA program, which the Intervenors attempt to make much of, the Staff conclusion was stated unambiguously:

Appendix A to this letter is an Executive Summary of the results of this inspection and of conclusions reached by this office. The NRC CAT noted no pervasive breakdown in meeting construction requirements in the samples of installed

hardware inspected by the team or in the applicant's project construction controls for managing the Braidwood project.

Id. The executive summary further stated:

Hardware, Project Management and documentation for construction activities were generally in accordance with requirements and licensee commitments. However, the NRC CAT did identify a number of construction program weaknesses that require increased management attention.

Id. (Ex. 10 to Motion, p.A-1.)

When asked his present opinion of the QA program at Braidwood, Mr. Keppler testified that he was comfortable with the Applicant's management commitment to quality at Braidwood and that the Staff was generally pleased with the adequacy of the Applicant's oversight of its construction contractors at the site. (Tr. 272-273.) He stated that the Staff was basically satisfied with the way that the QA program was proceeding, but said that he did not have enough information to give a definitive opinion at this time on how the program would now be rated. (Tr. 271-272.) Mr. Keppler's reluctance to give a definitive opinion on the Braidwood QA program at his deposition does not indicate that the Staff believes there are widespread problems with the program. Rather it reflects the fact that it would be premature for Mr. Keppler to offer his view until his organization's assessment of the Braidwood QA program is completed.

Thus, the present position of the NRC Staff, as expressed by Mr. Keppler, hardly provides a basis for a contention that there has been a "breakdown" of Applicant's

QA/QC program as that term has been used in the Callaway case. In the absence of a current Staff conclusion that there is an overall breakdown in the QA/QC program at Braidwood, the only remaining question under the Callaway case is whether there are existing hardware deficiencies resulting from inadequacies in the program identified in the past. At his deposition, Mr. Keppler clarified his statement that he made to the newspaper in 1984 that there were hardware deficiencies at Braidwood. Mr. Keppler stated that the hardware deficiencies he was referring to were those reflected in Inspection Report 83-09. (Tr. 95.) When questioned further, he acknowledged that except for some hardware deficiencies associated with bolting and piping,<sup>3/</sup> the items to which he was referring in the inspection report would more accurately be characterized as potential hardware deficiencies, rather than actual identified deficiencies. (Tr. 275-285.)

Intervenors have provided no other basis for believing that there are uncorrected construction deficiencies resulting from inadequacies in the QA program. They assert that "[a]ctual hardware deficiencies have gone unidentified and uncorrected by the quality assurance program." (Motion

---

<sup>3/</sup> The bolting problems referred to by Mr. Keppler are associated with the installation of safety-related equipment and this matter was reported by the Staff in 82-05. The other in hardware deficiency in 83-09 was the installation of a small number of the wrong size pipe. (See pages 16-17 of 83-09.)

at 16.) They do not allege that such deficiencies are existing. A review of Mr. Keppler's deposition leads to the conclusion that the identified hardware deficiencies provide an insufficient basis to infer any pattern of an overall breakdown of the Braidwood QA program.

2. Intervenors' Aggregation of Deficiencies.

Intervenors' contention barely refers to the current position of the NRC Staff expressed in the deposition of Mr. Keppler and Mr. Warnick. Rather, Intervenors support their allegation that a "breakdown in quality assurance procedures and failure to carry out the required quality assurance program" occurred such that "there is insufficient confidence that all deficiencies at Braidwood will be identified and corrected" (Motion at 16) by listing deficiencies that have been identified in the QA program mainly through routine NRC Staff inspection efforts.<sup>4/</sup> They apparently hope that the sheer number of findings they cite will

---

<sup>4/</sup> Intervenors' original contention challenged only the adequacy of construction quality assurance. The amended contention contains a sentence alleging that because of a QA breakdown at Braidwood there is doubt whether "safety-related structures, components and systems have been designed, fabricated and installed" in accordance with applicable requirements. This implicit challenge to design quality assurance is supported by several specific allegations, to which Applicant responds below. The implicit challenge to component fabrication quality assurance is unsupported by a single specific allegation and should be treated by the Board as mere surplus verbiage. Applicant does not understand Intervenors to challenge operating QA in their general statements, but if such a challenge is implicit, it too is supported by no specific allegation and should be disregarded.

irresistibly compel the conclusion that a pervasive breakdown must somehow have occurred, even if they cannot point to a pattern or root cause. However, simply amassing the Staff inspection reports that have issued over the years and culling out what Intervenors perceive as the most damaging findings falls far short of satisfying the basis requirement.<sup>5/</sup> Rather, as required by the Limerick decision, Intervenors must show a nexus between individual deficiencies to provide a basis for the existence of a pervasive pattern of failure. There has been a total failure to demonstrate such a nexus.

Intervenors have made a slight nod in the direction of attempting to establish the pattern of QA deficiencies which is necessary to provide a basis for a contention alleging a pervasive QA breakdown. Fourteen separate groupings of QA deficiencies are set out in the contention, each grouping identified as a violation of a separate criterion set forth in Appendix B to 10 C.F.R. Part 50. The essentially meaningless nature of Intervenors' classification of individual quality assurance deficiencies by Appendix B criterion is demonstrated by their assertion that

---

<sup>5/</sup> The simplest way to put Intervenors' picture of the Braidwood enforcement history in context is to note that through June 3, 1985 (I&E Report 85-018/019) there had been some 166 NRC Staff inspection reports at Braidwood. Out of that total the Staff inspectors found not a single noncompliance or deviation in 100 inspection reports, more than half of the total. These figures are not offered to disprove Intervenors' contention, but to place the bases for their repeated allegation of "serious and widespread violations" in perspective.

"many of these deficiencies constitute violations of multiple criteria and Intervenor hereby allege each such deficiency to be a violation of each and every applicable criteria." (Motion at 18.) Moreover, each of the 18 Appendix B criteria is couched in such general terms that an allegation of violation of one criterion scarcely illuminates the root cause of the deficiency so that a pattern of violations can be discerned. Yet the establishment of this pattern by the amended contention was precisely the requirement which Intervenor were required to meet. The Intervenor were charged by the Licensing Board to provide "the particular overall unacceptable pattern(s) purported to exist when the allegedly related individual incidents are aggregated and an explanation of why each specified deficiency supports the overall unacceptable pattern under which it has been grouped." The failure of the Intervenor to provide this fundamental element of their Contention transgresses both the basis requirements of 10 C.F.R. § 2.714 and the strictures of the Licensing Board's April 17 Order. A discussion of each separate grouping of deficiencies follows.<sup>6/</sup>

---

<sup>6/</sup> Since each of the fourteen factual groupings of individual QA/QC deficiencies does not disclose their relationship sufficient to provide a basis for an allegation of an overall QA/QC breakdown, it follows that the aggregation of the fourteen groupings themselves offers even less in describing a common pattern or root cause. Indeed, Intervenor do not even attempt to demonstrate any relationship among the fourteen groupings.

1. Intervenors' first aggregation of QA deficiencies asserts that Applicant, contrary to Criterion I, has failed to oversee effectively the quality assurance activities of its on-site construction contractors. Intervenors cite portions of NRC I&E Inspection Reports 82-05, 83-09 and 84-44/40 in support of this assertion. It is necessary to examine each of these documents to evaluate whether the cited portions adequately provide bases for a contention alleging a general breakdown of the Braidwood program.

The cited portion of I&E Report 82-05 concerns the work performed by an on-site construction contractor, Phillips, Getschow Company. The NRC concluded that a breakdown of the Applicants' QA program occurred with respect to the installation and installation inspection of mechanical safety-related equipment by Phillips, Getschow. (Motion at 19). Several violations of the quality assurance criteria affecting on-site construction contractors were identified in NRC I&E Inspection Report 83-09. (Motion at 20). Finally, Intervenors at pages 21 and 22 of their Motion referenced several deficiencies, concerns and program weaknesses reported as a result of the NRC's Construction Assessment Team inspection in I&E Inspection Report 84-44/40.

Intervenors' recitation of the foregoing events completes their effort under this aggregation of QA deficiencies to support a general allegation of a QA program

breakdown. They have not gone far enough. Intervenors have a legal obligation under Section 2.714 and the Licensing Board's April 17 Order to provide, as basis, an explanation as to the manner they believe these events lead to a conclusion that a breakdown of the QA program at Braidwood has occurred.

It is not enough to simply recite events already discovered by the NRC Staff and hope by that recitation that an inference is created to support the general assertion of a QA program breakdown. Applicant, who must carry the burden of proof, is entitled as a matter of law to have concrete issues identified for adjudication so that it will be on notice as to what evidentiary presentations are needed in order to respond to the contention. Gulf States Utilities Company (River Bend Station, Units 1 and 2), ALAB-444, 6 NRC 760, 769 (1977); Philadelphia Electric Company (Peach Bottom Atomic Power Station, Units 1 and 2) ALAB-216, 8 AEC 13, 20 (1974). Requiring the reader to draw inferences and to speculate as to what Intervenors intended by their first aggregation of QA deficiencies to buttress their allegation of a general QA program breakdown does not satisfy this legal requirement.

Moreover, a review of the cited portions of I&E Inspection Reports 82-05, 83-09 and 84-44/40 does not support any notion of a pattern or root cause problem that would cause one to question whether either a QA program

breakdown or a failure to adequately oversee on-site construction contractors exists. The breakdown referred to in 82-05 involved one on-site construction contractor concerning one discrete element of work. The identification of the QA violations under 83-09 only confirm what the Appeal Board in Callaway recognized, viz., that construction quality assurance deficiencies will occur during the course of an undertaking as large and as complex as the construction of a nuclear power plant. All the more, it is expected that on-site construction contractors will be cited for these deficiencies since they are performing the construction work. Consequently, no inference can be drawn from the mere occurrence of violations identified by NRC during construction surveillance activity that the license applicant is inadequately overseeing the quality assurance activities of its on-site construction contractor, and no further inference can be drawn that the QA program in general has collapsed.<sup>7/</sup>

Furthermore, I&E Inspection Report 84-44/40 belies Intervenors' assertion of either a QA breakdown or failure to properly oversee on-site activities. The inspections reported in 82-05 which led to the NRC Staff's conclusion

---

<sup>7/</sup> It should be stressed that neither I&E Reports 82-05 nor 83-09 cited Applicant under Criterion I to Appendix B to 10 C.F.R. Part 50 for a failure to properly oversee the QA activities of on-site construction contractors. Indeed, Mr. Keppler testified that he believed his Staff was presently satisfied with Applicant's efforts in this area. (Tr. 272-73).

that there had been a QA breakdown with respect to certain work by the mechanical contractor were conducted during a five month period ending in September 1982. The violations identified under 83-09 resulted from inspections which were conducted in 1983 and early 1984. By contrast, inspections conducted in December 1984 and January 1985 by the NRC Construction Assessment Team and reported in I&E Report 84-44/40 disclosed matters which were characterized as deficiencies, program weaknesses and concerns. Any doubt that these words were intended to convey the notion that these shortcomings were much less significant than those identified in previous inspections is dispelled by the conclusion of the CAT that it had:

[N]oted no pervasive breakdown in meeting construction requirements in the samples of installed hardware inspected by the Team or in Applicant's project construction controls for managing the Braidwood project.

Thus, it is clear that the only inference that could be drawn from the inspection reports cited by Intervenors is a trend indicating an improvement in the conduct of the Braidwood QA program.

In sum, Intervenors' first aggregation of QA/QC deficiencies does not establish the requisite basis because (i) they have failed to plead affirmatively the manner in which the cited events call into question the overall efficacy of the Braidwood QA program and, in particular, Applicants' oversight of the on-site construction contractors and

(ii) the documents offered under Intervenor's first basis argument do not suggest by implication any breakdown or failure of these activities.

2. Intervenor's second aggregation of QA/QC deficiencies alleging incidents of harassment and intimidation directed against employees at Braidwood who express quality concerns in violation of Criterion I, is even more deficient than Intervenor's other statements of bases. The other statements at least depend on specific findings or observations by the Staff. This assertion depends on a letter written by a dissatisfied quality control inspector employed by L. K. Comstock Engineering Company, the Braidwood electrical contractor. The letter complains about the writer's salary, the low morale of the QC inspectors and the amount of overtime the writer has worked, and it contains several vague assertions that the writer has been harassed and intimidated. (Ex. 15 to Motion.) Inspection Report 84/34-32 demonstrates that The NRC Staff has already investigated this allegation and found it to be without basis. The report (Inspection Report 84-34/32) states:

On September 21, 1984, the inspector met with the allexer and four other quality control inspectors. The five individuals did not provide any specific examples or records substantiating intimidation or harassment. During the course of the interview, it was revealed that the main issue is a morale problem which appears to be related to monetary matters and subjective opinions of poor management. . . . This allegation is considered closed.

(Ex. 16 to Motion, at p. 4.)

Intervenors fail to provide the necessary nexus that explains the manner in which this incident, if true, provides a basis for their contention that a general QA breakdown has occurred at Braidwood. Similarly, no inference can be drawn to suggest such a breakdown. Equally lacking in basis is Intervenors' allegation that present and former Braidwood employees have approached Intervenors in confidence and expressed unspecified "concerns regarding quality and safety at the Braidwood facility." (Motion at 22.) The claim that such vague statements have been made to the Intervenors cannot possibly serve, especially at this date, as adequate basis for admission of a harrasment and intimidation issue.

In sum, Intervenors' second aggregation of QA deficiencies provides neither support for its contention of a general QA breakdown at Braidwood nor support for a new contention on the more limited issue of harrasment and intimidation. On this latter score, Intervenors' original late-filed contention did not raise any issue of QC inspector harrasment and intimidation. Intervenors are attempting to introduce a new but late issue which should be summarily rejected given their failure to address the five factors applicable to a consideration of late-filed contentions.

3. Intervenors' third aggregation of QA deficiencies asserts that Applicant, contrary to Criterion II, has failed to establish a QA program which complies with

Appendix B and which is documented by written policies, procedures, or instructions and carried out in accordance with them. In support of this assertion, Intervenors have cited two portions of Inspection Report 83-09 (Motion, pp. 25-27). Staff cited the Applicant for violations dealing with instructions and inspections relating to welding for HVAC installations and with procedures relating to some site-designed small bore piping systems. Intervenors also list one violation each from two inspection reports resulting from inspections conducted in early 1985. (Exs. 11 and 17 to Motion.) One item dealt with inspection and training of craft personnel in relation to safety-related structural beams that were modified during nonsafety-related piping installations. The other dealt with the electrical contractor's having utilized quality control inspectors who were only qualified to Level I for inspection of electrical welds.

Intervenors have provided no explanation of how these events contribute to a pattern that would provide basis for challenging Applicant's QA program generally. They have not even explained how the cited incidents are allegedly related, but have left it to the Applicant to guess their meaning. Nor can any inference be drawn from these incidents that would provide basis for QA program breakdown. The very general requirement of Criterion II that site activities be carried out in accordance with

written procedures does not in itself establish any meaningful link between the disparate items cited in widely differing time periods. There is no basis for concluding that these are other than isolated deficiencies.

4. Intervenors fourth aggregation of QA deficiencies asserts that Applicant, contrary to Criterion II, has failed to provide effectively for the indoctrination of personnel performing activities affecting quality. As basis for this assertion, Intervenors list three violations cited by the Staff in the report of an inspection carried out in the Spring of 1984. (Ex. 18 to Motion.) One involved the electrical contractor's failure to establish a program for identifying the required reading for weld inspectors. A second matter concerned QC inspector training by the structural contractor. The third violation involved a finding that four of that contractor's weld inspectors were not proficient in the relevant welding code. Intervenors have again failed to explain how these incidents provide basis for an assertion that there has been an overall QA program breakdown. Moreover, no such inference can be drawn from the cited items.

5. Intervenors' fifth aggregation of QA deficiencies stands on a different footing from most of Intervenors' assertions. This item challenges the adequacy of design quality assurance at Braidwood, rather than construction quality assurance. Design quality assurance is a new

issue raised for the first time in the amended contention; the original contention attacked only the adequacy of construction quality assurance. "[D]esign quality assurance issues [are] separate and distinct from construction quality assurance issues." Commonwealth Edison Company (Byron Nuclear Power Station, Units 1 and 2), ALAB-793, 20 NRC 1591, 1611-13n (1984) (emphasis in original). There is no direct connection between design quality assurance and construction quality assurance issues. Union Electric Company (Callaway Plant, Unit 1), ALAB-750, 18 NRC 1205, 1109-10 (1983). Therefore, Intervenors' fifth aggregation of deficiencies cannot serve as any basis to advance their efforts to sustain the admissibility of a construction QA contention.

Because design quality assurance is a distinct issue raised for the first time in the amended motion, it constitutes a new late-filed contention. It must therefore not only meet the basis and specificity requirements of the regulations, but also undergo separate consideration under the criteria for the admission of late-filed contentions. Intervenors have not attempted to make such a showing and therefore, it should be rejected summarily.

6. Intervenors' sixth aggregation of QA deficiencies points to documentation problems identified by the NRC during its inspection activities. The cited events indicated that contrary to Criterion V of Appendix B to 10

C.F.R. Part 50, documentation shortcomings were identified with respect to the work performed by one on-site construction contractor. Other events cited by Intervenors refer to two isolated matters involving the L. K. Comstock Company noted under I & E Inspection Reports 83-09 and 84-31/29, one involving the H. H. Howard Corporation, an off-site contractor, and one matter noted under I & E 84-09 involving the Architect-Engineer, Sargent & Lundy.

Intervenors have failed to explain the manner in which the cited events either directly question or lead to a question of the efficacy of the Applicants' QA program generally. Once again, Applicant is left to its own devices to divine the connection perceived by the Intervenors between these events and a general breakdown of the QA program. This information or basis is required by law and Intervenors' failure in this respect renders useless their sixth aggregation of deficiencies.

Similarly, no inference should or can be drawn from the events cited by Intervenors that would suggest QA program breakdown. The Sargent & Lundy, Howard and Comstock events are too isolated to serve as any reasonable basis for Intervenors' contention. The Comstock item noted under I & E Report 84-31/29 (Motion, p. 32) was closed out by the NRC by I & E Inspection Report 85-007, dated April 4, 1985.

The documentation problems experienced by Phillips, Getschow Company likewise do not create any inference supporting the suggestion of a QA breakdown. The events listed by Intervenors may present a basis for questioning the past ability of Phillips, Getschow to discharge effectively its obligation to document adequately its QA program activities. However, Intervenors have not attempted to place such a question into issue, and on that basis, Getschow's documentation problems, standing alone, are not a matter in controversy for this Licensing Board to decide.

In sum, Intervenors have failed to provide the crucial basis that is needed to support their contention of an overall QA program breakdown. Moreover, an examination of the documents offered as bases by Intervenors does not suggest any inference supporting such a conclusion. A question could be raised concerning the documentation practices of Getschow, a matter not being pursued by Intervenors but nevertheless being addressed by Applicant under the watchful eye of the NRC Staff. See, e.g., the close-out of the item noted under I&E Report 84-21/20 (Motion, p. 32) by I&E Report 85-007, dated April 4, 1985.

7. Intervenors' seventh aggregation of QA deficiencies asserts that Applicant, contrary to Criterion VI, has failed to ensure that measures established to control issuance of documents assure that changes to the documents are properly reviewed and approved and are distributed to

and used at the location where the activity is performed. As basis for this assertion, Intervenors list one finding from Inspection Report 83-09. The Staff found that there was inadequate control of field changes to drawings being made during installation of one type of piping. Intervenors have not explained how this isolated deficiency supports an unacceptable pattern of QA implementation. It is clear that this item does not provide basis for an allegation of pervasive breakdown.

8. Intervenors' eighth aggregation of QA deficiencies asserts that Applicant, contrary to Criterion VIII, has failed to ensure that measures are established for the identification and control of materials, parts and components to prevent the use of incorrect or defective materials, parts or components. As basis for this assertion, Intervenors list six findings of deficiencies. In Inspection Report 82-05, the Staff found a deficiency in the maintenance of traceability records for some of the large cap screws used to secure the steam generator to its supporting columns. Although not mentioned by Intervenors, deficiencies in material control procedures were also noted in Inspection Report 83-09 with respect to piping material.

Intervenors do not explain how the deficiency noted in 82-05 relates to a pattern of overall inadequacy in the QA program. In addition, neither this event nor the matter referred to in 83-09 infer any such inadequacy. The other items listed by Intervenors do not improve their case. They list two findings from the CAT inspection report that some

switchboard wire was installed without appropriate qualification and that there were problems with following standards for bolting of cable trays and battery racks. What the CAT report found, however, was that "[t]he measures presently established for material traceability and control for on-going work appear to be adequate", except for the deficiency noted with regard to switchboard wire. (Ex. 10 to Motion, p. A-3.)

Intervenors list three other matters, all from the report of an inspection conducted in the Spring of 1985. They had to do with the wearing of shoe covers by personnel, inadequate or non-existent protective coverings for permanent spool pieces for certain suction lines and debris found in a pump room. Contrary to Intervenors' allegation, however, these items were cited by the Staff under Criterion XIII, not Criterion VIII, and they have no relation with the earlier findings cited in this aggregation of QA deficiencies.

9. Intervenors' ninth aggregation of QA deficiencies asserts that Applicant, contrary to Criterion IX, has failed to ensure that measures are established to assure that special processes, including welding, are controlled and accomplished in accordance with applicable requirements. As basis for this assertion, Intervenors list five miscellaneous violations from reports of inspections conducted in the Spring and Summer of 1984. (Exs. 20, 24 and 25 to Motion.) However, Intervenors have not explained how these miscellaneous violations satisfy the burden of establishing

a basis for an overall QA breakdown. Moreover no inference of a QA breakdown can be reasonably drawn from these events.

Two of the violations dealt with deficiencies in welding and recordkeeping for certain equipment anchors.<sup>8/</sup> These findings are not sufficient to establish a pattern of failure in the welding inspection area, especially in the face of the general finding of the comprehensive CAT inspection conducted during the same time frame. The CAT inspection report stated that "[w]elding and nondestructive examination activities were generally found to be conducted in accordance with the governing codes and specifications," despite some deficiencies noted in the report. (Ex. 10 to Motion, p. A-2.) Even less do the listed violations provide basis for an allegation of pervasive breakdown of the QA program.

10. Intervenors tenth aggregation of QA deficiencies lists events indicating deficiencies identified by the NRC Staff in various inspection activities. Intervenors again list events found in I&E Inspection Reports 82-05, 83-09 and 84-44/40 to support their contention. However,

---

<sup>8/</sup> The remaining three items are of no consequence. The item listed at Motion, p. 36, paragraph C, was closed by the Staff on March 12, 1985 in Inspection Report 85-005. The item listed at Motion, p. 36, paragraph D, was closed by the Staff on January 18, 1985 in Inspection Report 84-40. In addition, Intervenors have mischaracterized this item. They state that "Quality structural steel was not approved for use . . ." In fact, the inspection report found that "A quality structural steel, flux core welding procedure was not used . . ." The item listed at Motion, p. 36, paragraph E, was closed by the Staff on March 12, 1985 in Inspection Report 85-005.

nothing in the cited portions of these reports explains or suggests the manner in which the events indicate a QA program breakdown. More importantly, the Intervenor's have again failed to discharge their pleading obligation to explain the manner in which these inspection shortcomings raise doubts concerning the adequacy of the QA program.

Here as is the case with its other arguments, Intervenor's rely primarily on NRC inspections conducted in 1982, 1983 and early 1984, and reported in 82-05 and 83-09. The inspection shortcomings noted under these inspection reports form a part of Intervenor's' first aggregation of QA deficiencies. They add nothing more here. The random reference to four items addressed in the CAT inspection report creates no inference to indicate otherwise.

In sum, Intervenor's have again failed to provide the needed basis explaining the manner by which the reference matters support a conclusion that a breakdown has occurred with respect to the Applicant's overall QA program. In addition, the items listed by the Intervenor's do not support any such conclusion. All they do is reiterate what is already known, namely that the NRC Staff identified an isolated breakdown in the QA program in 1982, and inadequacies in certain aspects of the overall QA program through early 1984, but that after the CAT inspections the NRC's perception of the Applicant's QA program had become very positive. No pervasive QA breakdown was identified by the

Staff from the CAT inspections, and one cannot be successfully inferred from these events.

11. Intervenors' eleventh aggregation of QA deficiencies alleges that Applicant, contrary to Criterion XV, has failed to ensure that measures are established to control materials, parts or components which do not conform to requirements in order to prevent their inadvertent use or installation. As basis for this assertion, Intervenors cite from inspection report findings from different inspections conducted over a period of several years. (Exs. 3, 18, 21 and 26 to Motion.) These findings show that one contractor failed to properly document the disposition of some non-forming steam generator support bolts received in 1979. They also show that Edison failed to properly control the storage of pipe received in 1977. The other two findings involve a different contractor and occurred in reports of inspections conducted in 1984 and early 1985. (Exs. 18 and 26 to Motion.)

Intervenors have provided no explanation suggesting that these form a pattern supporting a conclusion of pervasive breakdown. Nor can such an inference be drawn. Although there is a general similarity between the first two incidents, they do not support an inference that there is a general failure to control nonconforming materials at the site. The second two incidents, which occurred several years later, are not clearly related either to each other or

to the earlier items. Furthermore, one of these later items has been resolved and closed out by the Staff in a subsequent inspection report.<sup>9/</sup>

12. Intervenors' twelfth aggregation of QA deficiencies asserts that Applicant, contrary to Criterion XVI, has failed to ensure that measures were established to ensure that conditions adverse to quality are promptly identified and corrected. As basis for this assertion, they cite portions of nine inspection reports issued over a period of several years. Two items are cited from Inspection Report 82-05. In the first, the Staff noted that when Edison identified a problem with bolting of the steam generator supports at Byron Station, it did not take timely action to assure a similar problem would not occur at Braidwood. Inspection Report 82-05 also identified failures on the part of Applicant to take effective corrective action with respect to QA deficiencies on the part of one contractor relating to one element of its work. Intervenors also list findings from Inspection Report 83-09 in regard to inadequate disposition of a nonconformance report by one contractor and failure to take corrective action on correction notices by another contractor.

Intervenors have not provided the required basis explaining how the cited instances support a conclusion of

---

<sup>9/</sup> The item cited at Motion, p. 40, paragraph B, was closed by the Staff on March 15, 1985 in Inspection Report 84-36.

an overall QA breakdown. Moreover, the inspection history documented in the cited inspection reports does not support such a conclusion. In the aggregate, the cited findings do indicate deficiencies in the controls for nonconformance reports by two site contractors during the relatively early time period covered by Inspections Reports 82-05 and 83-09. They do not support an inference that there has been a general failure to take timely and effective corrective actions at Braidwood. Moreover, once again the Staff's CAT report, issued after a comprehensive inspection in late 1984 and early 1985, demonstrates an improving trend. The CAT report found that "[t]he corrective action programs generally are being implemented in accordance with requirements. However, based on the results of this inspection, the controls for nonconformance reports issued by site contractors previous to 1983 need additional review." (Ex. 10 to Motion, p. A-3.) There is thus no basis for the allegation of a systematic failure in this area.

In light of the general conclusion on the adequacy of Applicant's corrective actions in the CAT report, the finding in the report cited by Intervenors, indicating that Applicant's corrective actions had not been adequate for two nonconformance reports issued from three to five years previously does not provide basis for their assertion. Similarly, the miscellaneous deficiencies they cite from reports of inspections conducted in the Spring and Fall of 1984 do not

serve to rebut the conclusion of the CAT report. (Exs. 18, 20 and 25 to Motion.)

Intervenors also cite portions of two inspection reports dealing with the Braidwood Construction Assessment Program ("BCAP"). As Applicant explained in its Answer to the original QA contention, BCAP is an initiative undertaken by the Applicant that is not intended to replace the ordinary QA program as a means of assuring quality construction. Despite Intervenors' reference to it here, Applicant does not read the amended contention as putting BCAP affirmatively in issue. Intervenors are simply attempting to point out deficiencies in it because they anticipate that Applicant will rely on it as an "affirmative defense" if Intervenors demonstrate a pervasive breakdown of the QA program. Accordingly, the BCAP findings do not provide basis for Intervenors' assertion here. Indeed the reference to BCAP at page 44 of the Motion is not a reference to a Staff finding of noncompliance, but only to a Staff suggestion for improvement of the program.

13. Intervenors' thirteenth aggregation of QA deficiencies asserts that Applicant has failed to comply with Criterion XVII of Appendix B to 10 C.F.R. Part 50 with respect to adequate recordkeeping of activities affecting quality. As supporting bases, Intervenors point to two events. One concerns design QA documentation involving the Braidwood architect-engineer, Sargent & Lundy Engineers.

This matter as explained supra under Intervenor's fifth aggregation of QA deficiencies is immaterial to a construction QA contention and it should be disregarded. The other recordkeeping event, which was identified during NRC inspections conducted in 1982 and early 1983 and reported in I&E Report No. 82-05, hardly rises to the level of significance necessary to support an assertion of an overall breakdown in the QA program at Braidwood. More importantly, Intervenor's have not made any attempt to articulate this required showing. The absence of showing renders Intervenor's thirteenth aggregation of QA deficiencies valueless as supporting basis for Intervenor's Contention.

14. Intervenor's final aggregation of QA/QC deficiencies asserts that Applicant, contrary to Criterion XVIII, has failed to insure that planned and periodic audits are carried out to verify compliance with the QA program. As basis for this assertion, Intervenor's cite portions of Inspection Reports 82-05 and 83-09. Report 82-05 identified inadequate auditing by Applicant with respect to one element of the work of one site contractor. Report 83-09 identified inadequacies with respect to aspects of the auditing activities conducted by three site contractors. Once again Intervenor's have not provided the requisite basis by explaining how these cited deficiencies have a common root cause nor have they demonstrated how these isolated incidents support a conclusion that an overall QA breakdown sufficient to call the integrity of the facility in question has taken place.

## CONCLUSION

The foregoing analysis of the 14 individual aggregations of QA deficiencies points out a lack of nexus between the cited deficiencies and either the question of the overall efficacy of the Braidwood QA program or Applicant's general compliance with the QA criteria cited by Intervenor. This is so because Intervenor have failed to provide this linkage. The grouping of miscellaneous deficiencies arising in different functional areas of plant construction under an Appendix B Criterion setting very general requirements does not in itself show that the cited incidents are related or that they result from some underlying root cause. An examination of the events cited by Intervenor fail to reveal any pattern or patterns implying a QA breakdown. The facts are that deficiencies in the QA program and its implementation were identified by the NRC Staff during the 1982-1983 time frame in I&E Reports 82-05 and 83-09. However, subsequent inspections in 1984 and early 1985 (I&E Report 84-44/40 and SALP IV) indicate a general trend of improvement. Intervenor's suggestion that this record provides a basis for a contention of an overall QA breakdown at Braidwood is misguided. For all of these reasons, the contention should be rejected.

### II. Intervenor Have Failed To Satisfy The Standard For Admission Of A Late-Filed Contention.

In its Order of April 17, 1985, the Licensing Board determined that the criteria for admission of a late-

filed contention were applicable to Intervenor's proposed QA contention. (Order at 26 and n. 12.) Therefore, in order for the amended QA contention to be admissible in this proceeding it must satisfy the balancing test of the following five factors:

- (i) Good cause, if any, for failure to file on time.
- (ii) The availability of other means whereby the petitioner's interests will be protected.
- (iii) The extent to which the petitioner's participation may reasonably be expected to assist in developing a sound record.
- (iv) The extent to which the petitioner's interest will be represented by existing parties.
- (v) The extent to which the petitioner's participation will broaden the issues or delay the proceedings.

10 C.F.R. § 2.714(a)(1). Although the Licensing Board examined each of these factors in relation to the original proposed contention, the Board did not engage in a final balancing of the factors to determine whether the contention was properly admissible under the criterion. This omission from the Board's analysis, coupled with the fact that the Applicant believes the analysis of certain of the factors is different for the amended contention, prompts a reexamination of the late-filed factors.

In its April 17 Order, the Licensing Board concluded that Intervenor's had not shown good cause for their failure to make a timely filing. Consequently, the burden

on Intervenor with regard to the remaining four factors is substantially increased. (Order at 28.) With regard to factors two and four, Applicant concedes that the Board's conclusions that these criteria weighed in favor of admission of the original proposed QA contention are equally applicable to the amended contention.

The third factor of § 2.714(a)(1) concerns the extent to which the Intervenor's participation may reasonably be expected to assist in developing a sound record. The Licensing Board indicated that, with a sufficiently specific and focused QA contention, the Board expected that Intervenor would assist in developing a sound record. In this regard, the Board referred to the contribution made by BPI in the Byron operating license hearing. (Order at 29.) However, given the wide-ranging and open-ended nature of Intervenor's amended contention, Applicant anticipates that Intervenor's contribution to the development of a sound record in this proceeding will suffer from the same shortcomings as were experienced in the Byron proceeding. Judge Smith, Chairman of the Byron Licensing Board, complained publicly about BPI's tactics of "raising every conceivable issue" and then expecting the Board to "untangle it". (May 30, 1984 Byron Transcript at 8173.) The problem presented by BPI's tactics was that the intervenor presented long lists of issues for adjudication and then BPI failed to act affirmatively to litigate these issues in a focused manner for the Board. (Id. at 8173-8180.) The amended

contention proposed in this proceeding appears to proceed from the same strategy. The contention is a laundry list of issues lacking a framework for either manageable or meaningful litigation. This judgment is reinforced by Intervenor's failure to articulate any overall unacceptable pattern of QA deficiencies that would support an assertion of a breakdown of the Braidwood QA program. For these reasons, Intervenor and BPI's participation would likely not be of assistance in developing a sound evidentiary record.

Doubt that Intervenor are likely to assist in developing a sound record is increased by Intervenor's failure to comply with the Board's desire that they "include a specification of the factual and expert witnesses they expect to present at the hearing, and the subjects on which each witness or witness panel will testify". (Order at 42); see also Mississippi Power & Light Company (Grand Gulf Nuclear Station, Units 1 and 2), ALAB-704, 16 NRC 1725, 1730 (1982); Long Island Lighting Company (Shoreham Nuclear Power Station, Unit 1), ALAB-743, 18 NRC 387, 400-401 (1983). In fact, Intervenor acknowledge that they have not yet retained QA experts, and they offer no plans for the presentation of testimony related to even a portion of the proposed contention. Thus, nearly three months after submission of this original QA contention, and despite the Board's invitation, Intervenor have provided no indication of how they will litigate any QA issues. Indeed, they have not even specified a proposed discovery schedule. These

failures, coupled with the open-ended nature of the contention, BPI's performance in the Byron proceeding, and Intervenor's tardiness thus far in this proceeding, all indicate that factor three weighs against admission of the amended contention.

In evaluating the fifth factor, the extent to which litigation of the original proposed QA contention would delay the proceeding or broaden the issues, the Licensing Board concluded that a number of circumstances favored admission. First of all, the Board expressed the belief that the contention was being proposed at a stage early enough in the proceeding so that "the admission of the QA/QC contention would not appreciably alter projected target dates in the proceeding". (Order at 31.) The Board observed that, if an amended contention were to be admitted, discovery could be completed by the middle to the last half of July 1985. (Id. at 43.) While this schedule may have been realistic for a contention which met the specificity requirements set forth in the Board's Order, such a schedule is clearly not feasible in light of the many diverse issues raised by the contention now proposed.

The Board reasons that the broadening effect of admitting of a QA contention is counterbalanced by the fact that Intervenor's have voluntarily withdrawn other contentions. (Order at 34.) However, assuming the relevance of this fact, the amount of time necessary for discovery and

litigation related to the proposed QA contention will be many times greater than would have been required for those other, narrower contentions. The Board's assessment relied, in part, upon the expectation that the amended QA contention would be "a carefully focused, well reasoned contention" that did not explore "extraneous matters of lesser importance", but rather supplied "greater specification and basis [to] provide assurance that only significant issues, if any, will be examined". (Id. at 32.) The amended contention lacks such focus and reasoning. It presents a miscellaneous list of allegations without attempting to assure that only significant issues will be examined. Consequently, admission of the contention is certain both to substantially delay the proceeding and to broaden the issues, with little or no assurance that Intervenors' participation will assist in developing a sound record.

Admission of the amended contention will also delay the proceeding because Applicant will be required to litigate issues which cannot be ready for litigation by October 1985. The Affidavit of Michael J. Wallace attached hereto demonstrates that certain of the corrective action programs that might need to be litigated if the amended contention were admitted practically cannot be completed at the earliest until October, November, and even December 1985. Applicant cannot be prepared to litigate these issues before the programs are completed and there has been sufficient time for the reporting of the results to the NRC,

for the Staff to review the results, and for both Applicant and Staff to prepare and submit testimony to the Board and parties. The time necessary to report the results of any one of these programs to the Staff and for the Staff to review the results and prepare testimony would likely be on the order of two months. Hearings generally begin two weeks after the submission of the prepared testimony. Hence, Applicant and Staff would likely not be prepared to litigate certain of the programs until mid-February of 1986. It is assumed that some hearings on QA matters would be held earlier and that only two additional weeks of hearings would be needed to close the record, namely by March 1, 1986. This estimate appears conservative since it does not account for delays in the programs which may result due to the burdens placed on counsel and project resources by the ongoing hearings.

Holding the record open for hearings in February 1986 would represent a significant delay from the hearing schedule proposed in the Stipulation submitted to the Board on March 22, 1985. (Letter, E. Chan to Administrative Judges, dated March 22, 1985). That schedule contemplates the commencement of hearings on October 1, 1985 and the close of the hearing record on November 1, 1985. Therefore, admission and litigation of the proposed contention would delay the close of the record for at least four months ac-

ording to Applicant's estimate.<sup>10/</sup>

On a balancing of the five factors for determining the admissibility of late-filed contentions, the inescapable conclusion is that the amended contention must be rejected. With no showing of good cause for their failure to make a timely filing, Intervenor's burden with regard to the remaining four factors is substantially increased. (Order at 28); Virginia Electric & Power Company (North Anna Station, Units 1 and 2), ALAB-289, 2 NRC 395, 398 (1975). While the two factors of relatively minor importance weigh in favor of admission of the contention (Order at 28), Intervenor has failed to meet their burden with regard to factors three and five for the reasons set forth above. Hence, the case for denial of the amended QA contention for failure to meet the requirements of § 2.714(a) is even more compelling in this instance than was the case in South Carolina Electric & Gas Company (Virgil C. Summer Nuclear Station, Unit 1), ALAB-642, 13 NRC 881 (1981).

---

10/ Applicant notes that, despite Intervenor's representation in their February 28, 1985 supplemental status report to the Board that they would "propose a schedule for litigation of such [QA] contention which is consistent with Edison's contemplated fuel load dates," Intervenor has offered no such proposed schedule. Applicant's discussion of the fuel load date is found at page 5 of Mr. Wallace's affidavit.

In ALAB-642, the Appeal Board reversed a licensing board's grant of an untimely intervention petition. The Appeal Board's reasoning was that inexcusable lateness in filing, coupled with an expansion of the scope of the proceeding, required denial of the late-filed petition even though the petitioner had made a marginal showing of ability to contribute to the record. Consistent with this reasoning, Intervenors' inexcusable delay in filing, their failure to demonstrate that their participation might be expected to assist in developing a sound record, and the anticipated delay in the proceeding and broadening of the issues which would result if the contention were admitted are more than enough to require denial of Intervenors' motion under § 2.714(a).

#### CONCLUSION

For the foregoing reasons, Intervenors' proposed QA contention should be rejected for failure to comport with the basis and specificity requirements and the standard for late-filed contentions.

Respectfully submitted,

By Joseph Gallo  
Joseph Gallo

Peter Thornton  
Peter Thornton

Rebecca J. Lauer  
Rebecca J. Lauer

Attorneys for Applicant  
COMMONWEALTH EDISON COMPANY

ISHAM, LINCOLN & BEALE  
1120 Connecticut Avenue, N.W.  
Suite 840  
Washington, D.C. 20036  
(202) 833-9730

Three First National Plaza  
Suite 5200  
Chicago, Illinois 60602  
(312) 558-7500