457
457

June 11, 1985

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter Of:	)	
	)	
COMMONWEALTH EDISON COMPANY	)	
	)	Docket Nos. 50-456OL
(Braidwood Nuclear Power Station, Units 1 and 2)	)	50-457

MOTION OF COMMONWEALTH EDISON COMPANY
FOR SUMMARY DISPOSITION ON PLEADINGS

Pursuant to the provisions of 10 C.F.R. § 2.749, Commonwealth Edison Company ("Applicant" or "CECo") moves the Atomic Safety and Licensing Board ("Licensing Board") for summary disposition of Contention 1 of Bob Neiner Farms, Inc. ("Neiner Contention 1") and of Subparagraph (c) of Contention 1 of Intervenors Bridget Little Rorem et al. ("Rorem Subcontention 1(c)"). As grounds for this Motion, applicant submits that previous filings in this proceeding and the attached statements of facts, affidavits and deposition show that there are no genuine issues as to any material fact relevant to Neiner Contention 1 and Rorem Subcontention 1(c). Applicant is therefore entitled to summary disposition of those contentions as a matter of law.

D503

ARGUMENT

1. Purpose of Summary Disposition

The summary disposition provisions contained in Section 2.749 of the Commission's rules, 10 C.F.R. § 2.749, is analogous to Rule 56 of the Federal Rules of Civil Procedure. Gulf States Utilities Co., (River Bend Station, Units 1 and 2), LBP-75-10, 1 NRC 246 (1975). The purpose of summary disposition is to ensure that only contested issues involving disputes over material facts are submitted to the Board by way of evidentiary presentations at hearings. The Atomic Safety and Licensing Appeal Board has commented that "the Section 2.749 summary disposition procedures provide, in reality as well as in theory, an efficacious means of avoiding unnecessary and possibly time-consuming hearings on demonstrably insubstantial issues". Houston Lighting and Power Company, (Allens Creek Nuclear Generating Station, Unit No. 1), ALAB-590, 11 NRC 542, 550 (1980).

Accordingly, use of the summary disposition provision is encouraged to resolve dubious issues raised in petitions to intervene and for which no genuine issues of material fact exist. See, e.g., Northern States Power Co., (Prairie Island Nuclear Generating Plant, Units 1 and 2), CLI-73-12, 6 AEC 421, 242 (1973), and Duquesne Light Co. (Beaver Valley Power Station, Unit 1), ALAB-109, 6 AEC 243, 246 (1973). As the

Atomic Safety and Licensing Board has emphasized, "[t]he purpose of the summary disposition rule 'is not to cut litigants off from their right of trial if they really have evidence which they will offer at trial, it is to carefully test this out, in advance of trial, by inquiring and determining whether such evidence exists'". Gulf States Utilities Co., (River Bend Station, Units 1 and 2), LBP-75-10, 1 NRC 246, 247-48 (1975)

2. Burden of Proof

Section 2.749 of the Commission's rules provides that a movant is entitled to summary disposition as a matter of law as to any matter involved in a proceeding if the filings in the proceeding, depositions, answers to interrogatories, and the statements and affidavits submitted by the parties demonstrate that there is no genuine issue to be heard as to any material fact relevant to the matter. Sections 2.749(a) and 2.749(d). The burden of showing that there is no genuine issue as to any material fact is on the movant. Cleveland Electric Illuminating Co., (Perry Nuclear Power Plant), ALAB-443, 6 NRC 741 (1977). To this end, the rule provides that the movant must attach to his motion "a separate, short and concise statement of the material facts as to which the moving party contends that there is no genuine issue to be heard". Section 2.749(a). The motion may be accompanied by affidavits setting forth facts that would be admissible in evidence and

these may be supplemented by depositions and answers to interrogatories. Sections 2.749(a) and 2.749(b).

Any other party to the proceeding may oppose the motion, but the rule is quite explicit as to what is required for a valid opposition. The opposing party must file a statement of material facts as to which he contends there is a genuine issue, and all material facts in the movant's statement will be deemed admitted unless they are controverted in the statement of the opposing party. Section 2.749(a). Moreover, if the motion is properly supported, "a party opposing the motion may not rest upon the mere allegations or denials of his answer; his answer by affidavits or as otherwise provided in this section must set forth specific facts showing that there is a genuine issue of fact. If no such answer is filed, the decision sought, if appropriate, shall be rendered". Section 2.749(b).

A Licensing Board has commented extensively on this requirement:

> To defeat summary disposition an opposing party must present facts in the proper form; conclusions of law will not suffice. The opposing party's facts must be material, substantial, not fanciful, or merely suspicious. One cannot avoid summary disposition "on the mere hope that at trial he will be able to discredit movant's evidence; he must, at the hearing, be able to point out the court something indicating the existence of a triable issue of material fact." 6 Moore's Federal Practice 56.15(4). One cannot "go to trial on the vague supposition that something may turn up." 6 Moore's Federal Practice 56.15(3).

See Radio City Music Hall v. U.S., 136 F.2d 715 (2nd Cir. 1943). In Orvis v. Brickman, 95 F.Supp. 605 (D.D.C. 1951), the Court, in granting the defendant's motion for summary judgment under the Federal Rules, said:

> All the plaintiff has in this case is the hope that on cross-examination . . . the defendants . . . will contradict their respective affidavits. This is purely speculative, and to permit trial on such basis would nullify the purpose of Rule 56 . . . .

Gulf States Utilities Co., (River Bend Station, Units 1 and 2), LBP-75-10, 1 NRC 246, 248 (1975) (footnotes omitted).

3. Cases Granting Summary Disposition

A number of decisions demonstrate that, as the Appeal Board said in Allens Creek, supra, summary disposition provides, "in reality as well as in theory, an efficacious means of avoiding unnecessary and possibly time consuming hearings on demonstrably insubstantial issues". 11 NRC at 550. In Virginia Electric and Power Co., (North Anna Nuclear Power Station, Units 1 and 2), ALAB-584, 11 NRC 451 (1980), the Appeal Board sustained the Licensing Board's grant of summary disposition in the applicant's favor on all contentions and the consequent grant of the application.

One contention asserted that alternatives to the proposed action had been inadequately considered. The applicant and the Staff submitted affidavits tending to show that the intervenors' proferred alternatives were economically

unacceptable and were not environmentally preferable to the applicant's proposal. Intervenors submitted an affidavit tending to show that a proper determination of the relative economies of the alternatives required more information. The Appeal Board commented that

> the intervenors asserted no facts which might bring into genuine question the applicant's assertion that each of the three proposed alternatives was unacceptable by reason of both cost and timing. Rather, they confined themselves to a general denial of the assertion, coupled with an insistence on the part of their economic consultant that more information was needed. In short, what the intervenors in effect put forth was a disclaimer of their ability to ascertain whether a genuine issue of material fact existed with respect to the feasibility of their alternatives.

11 NRC at 455. Furthermore, the Appeal Board found a second ground for granting summary disposition in that intervenors had not established the existence of any genuine issue of fact with respect to the environmental superiority of their alternatives.

In Houston Lighting and Power Co., (Allens Creek Nuclear Generating Station, Unit No. 1), ALAB-629, 13 NRC 75 (1981), the Appeal Board sustained the Licensing Board's grant of summary disposition in applicant's favor on an intervenor's contention that a proposed alternative to the license application should have been considered. Applicant submitted an affidavit tending to show that the suggested alternative was technologically, economically and legally infeasible as a substitute for its proposal. The intervenor's response,

referencing certain studies, "fell far short", in the opinion of the Appeal Board, "of countering the principal points" made in the applicant's motion and affidavit. "Specifically, he offered little beyond naked assertions to butress his claim" that his proposed alternative was feasible. 13 NRC at 81.

In Florida Power and Light Co., (Turkey Point Nuclear Generating Station, Units 3 and 4), LBP-81-14, 13 NRC 677 (1981), the Licensing Board granted summary disposition in the applicant's favor on all contentions and consequently cancelled the evidentiary hearing. One contention asserted that during the proposed action unacceptable radioactive releases were likely to occur. Both the applicant and the intervenor submitted affidavits. Although the intervenor's affidavit controverted some of the applicant's assertions, the Licensing Board, after examining the affidavits, established a list of six material facts as to which it found there were no genuine issues to be heard. Finding these material facts conclusive, the Board summarily disposed of the contention. 13 NRC, at 702-03.

These decisions demonstrate in detail the criteria that should govern a licensing board's consideration of a motion for summary disposition. When such a motion is properly supported, the opposing party may not confine itself to a general denial nor to a disclaimer of its ability to determine whether a genuine issue of material fact exists without further

information. Even when some of the moving party's asserted facts are factually controverted, the board will determine whether there are material facts as to which no genuine issue exists sufficient to dispose of the contention. The Appeal Board in Houston Lighting and Power Company (Allens Creek Nuclear Generating Station, Unit 1), ALAB-590, 11 NRC 542, 551 (1980), characterized its North Anna decision, supra, as holding that "because, in response to the Applicant's motion for summary disposition, the intervenors had not demonstrated that a genuine issue of fact existed respecting the environmental superiority of any of their suggested alternatives, we held that as a matter of law none of these alternatives had to be further explored at an evidentiary hearing". (Emphasis in original.)

Finally, if the Licensing Board determines that it cannot summarily dispose of a contention, the Board should specify the material facts as to which it finds there is a genuine issue. This sound administrative procedure is suggested by the Licensing Board's practice in Turkey Point, supra, and is in any case implicit in the purpose of summary disposition, which is to narrow the issues requiring an evidentiary hearing. Absent such a specific finding, trial of the contention might require the parties to make an evidentiary presentation regarding many material facts as to which there was no genuine issue. Such unnecessary and time-consuming

litigation would defeat the purpose of the summary disposition rule.

CONCLUSION

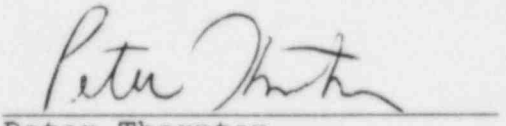
To aid the Board in its consideration of this Motion, Applicant is submitting the following documents in connection with each contention on which summary disposition is sought.

1. A statement of the contention and of material facts as to which there is no genuine issue to be heard and a brief discussion of particular reasons why summary disposition is appropriate on that individual contention.
2. Affidavits or depositions in support of each statement.

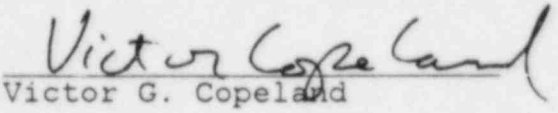
The filings in this proceeding together with the attached statements, affidavits and deposition, demonstrate that there is no genuine issue as to any material fact and that Applicant is entitled to summary disposition as a matter of law of the contentions referred to herein. Therefore, pursuant to 10 CFR § 2.749, the Licensing Board should grant Applicant's Motion for Summary Disposition. In the alternative, if the Board determines that it is unable to summarily dispose of a given contention, Applicant respectfully requests that the

Board enter a finding specifying the material fact or facts as to which there exist genuine issues requiring hearing.

Respectfully submitted,



Peter Thornton



Victor G. Copeland

Two of the Attorneys for
Applicant, COMMONWEALTH
EDISON COMPANY

ISHAM, LINCOLN & BEALE
Suite 5000
Three First National Plaza
Chicago, IL 60602
(312) 558-7500

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

Dated: June 13, 1985

NEINER CONTENTION 1

Neiner Contention 1 states:

> Intervenors contend that the 765kV transmission lines that will be used to transport the electrical output from the Braidwood Station create an unacceptable, hazardous and dangerous condition to persons living or working on a daily basis within 600 feet from the closest line, and that the 765kV transmission lines should not be placed closer than 600 feet from any structure or area in which people can be expected to be present six or more hours per day. The hazardous and dangerous conditions include: audible noise impairing hearing, increasing tension, interfering with sleep, interfering with speech; interference with the operation of cardiac pacemakers; biological effects on humans because of exposure to electric fields excluding the use of nearby areas for working, living or recreation, and the danger of shock to persons and animals.
>
> The basis for this contention is that Commonwealth Edison testified before the Illinois Commerce Commission that as of March 3, 1978, approximately 60% of all transmission right-of-way acquisitions included right-of-way for 345kV and 765kV transmissions lines. Opinion No. 78-13, involving Case No. 26529, issued by the Public Service Commission of New York discusses the hazards associated with 765kV lines.

MATERIAL FACTS AS TO WHICH THERE IS NO GENUINE ISSUE TO BE HEARD

1. Applicant has never planned and does not now plan to build a 765kV transmission line to transmit power from Braidwood Units 1 and 2. (Affidavit, of Alfred H. Getty, Attachment A hereto, p. 1.)

2. When Applicant first planned to develop the Braidwood site, it acquired enough land to accommodate four units. Because of Applicant's load growth projections at that time, it was believed that 765kV transmission in the vicinity of Braidwood would be needed about 6 or 7 years after the 345kV

transmission lines needed to serve the initial two units. (Getty Affidavit, pp. 1-2.)

3. In planning the transmission connected with the Braidwood site, Applicant therefore made provision for possible future transmission lines as well as those needed for the initial development of Braidwood Units 1 and 2. (Id.)

4. Applicant determined that if additional units were installed at Braidwood or at other nearby stations, such as LaSalle County, 765kV would be the most economical voltage to use. The rights-of-way from Braidwood to LaSalle County Station and to the system to the east of Braidwood past the Neiner Farms were therefore planned to accommodate a 765kV circuit, as well as the two 345kV circuits planned to transmit the power from Braidwood Units 1 and 2. (Id.)

5. Because of the perceived need for near-term development of additional units at the Braidwood site or at other nearby stations, such as LaSalle County, Applicant began to acquire rights-of-way for the future 765kV transmission line as well as for the 345kV lines needed for Braidwood Units 1 and 2. It was believed that unless a right-of-way adequate to accommodate both sets of structures were acquired at that time it might later be prohibitively expensive to do so. (Getty Affidavit, p. 2.)

6. Applicant has now acquired rights-of-way with adequate width for the 765kV circuit over more than 97% of its planned route. (Getty Affidavit, p 3.)

7. The future 765kV transmission line was referenced in the Environmental Report submitted with Applicant's application for a Construction Permit for Braidwood Units 1 and 2 and it continued to be referenced in the Environmental Report submitted with Applicant's application for an Operating License. (Affidavit of David H. Smith, Attachment B hereto, p.1).

8. Since 1973, Applicant's load growth projections have decreased dramatically, deferring the need for the future 765kV transmission line. It is not now reasonable to foresee the installation of additional capacity, with its attendant need for 765kV transmission, at the Braidwood site for at least 25 years. (Getty Affidavit, p. 4.)

9. Applicant therefore does not plan to build a 765kV transmission line to serve additional units at Braidwood for at least 25 years. Generating capacity additions at other locations may also require future installation of a 765kV line on the right-of-way east of Braidwood. Similarly, however, Applicant does not plan to install the line for this reason within 25 years. */ (Getty Affidavit, pp. 4-5.)

10. Applicant has amended the Environmental Report submitted with its application for an Operating License to make clear that no 765kV transmission line will be constructed or

---

*/ The Affidavit of Alfred H. Getty submitted on May 30, 1985 was incomplete in this respect. Mr. Getty's affidavit filed herewith contains this supplementary information.

operated in connection with Braidwood Units 1 and 2. (Smith Affidavit , p. 2.)

11. The NRC Staff's Final Environmental Statement prepared in connection with Staff's evaluation of Applicant's application for an Operating License does not evaluate the electric field effects and other environmental effects resulting from operation of a future 765kV transmission line associated with Braidwood Station. (Deposition of Edwin D. Pentecost, May 16, 1985, Tr. 60-61, Attachment C hereto.)

DISCUSSION:

Neiner Contention 1 asserts that the 765kV transmission lines that will be used to transmit the electrical output of Braidwood Station will create a hazardous condition to persons living or working in their vicinity. Intervenors state as basis for the Contention that Applicant testified before the Illinois Commerce Commission in 1978 that 60% of the transmission rights-of-way acquired at that time included rights-of-way for 345kV and 765kV transmission lines.

The Affidavit of Alfred H. Getty, Applicant's System Planning Manager, explains the origin and the present status of Applicant's plans to construct and operate a 765kV transmission line associated with Braidwood Station. Applicant does not now plan and has never planned to construct such a line to transmit power from Braidwood Units 1 and 2. When the Braidwood site

was originally planned, however, Applicant deliberately acquired property large enough to accommodate four nuclear units, not two. Given the high rate of Applicant's projected load growth at that time, it was anticipated that to meet Applicant's need for power 765kV transmission would be needed in the vicinity of Braidwood about 6 or 7 years after the initial development of Units 1 and 2. Applicant had determined that a 765kV transmission line would be the most economical means of transmitting the output of additional units at the Braidwood site or at other nearby stations, such as LaSalle County.

Since the original plan for the site anticipated an ultimate development of four units, prudent long-range planning dictated that the rights-of-way emanating from the station be adequate to accommodate a future 765kV line, as well as the 345kV lines required for the initial development of Braidwood Units 1 and 2. To that extent there was a relation between a future 765kV line and Applicant's plans for Braidwood Station, although not the planned Braidwood Units 1 and 2. The future 765kV line was referenced in the Environmental Report submitted in connection with Applicant's application for a Construction Permit for Braidwood Units 1 and 2.

Since that time, however, Applicant's plans have changed. Since 1973, there has been a dramatic decrease in Applicant's load growth projections. This has resulted in a

substantial deferral of Applicant's plans for additions to its generating capacity. In particular, Mr. Getty states that he cannot envision any additional units being installed at the Braidwood site for at least 25 years. Accordingly, Applicant has no plans to construct a 765kV line to transmit power from such units for at least 25 years. Generating capacity additions at other locations may also require future installation of a 765kV line on the right-of-way east of Braidwood, but Applicant likewise does not plan to install a line for that reason within 25 years. The reference to the future 765kV line was retained in the Environmental Report that Applicant submitted in connection with its application for an Operating License for Braidwood Units 1 and 2. Applicant submits, however, that the inference that the environmental effects of such a line should be evaluated in connection with its application for an Operating License is not appropriate. Applicant has therefore amended its Environmental Report to make clear that any future plans to construct and operate such a line are not associated with Braidwood Units 1 and 2.

The NRC case law amply supports Applicant's position that the environmental impacts of a future transmission line that may be constructed to transmit power from additional units at Braidwood or at other nearby stations are not within the scope of the impacts the Commission should evaluate in connection with the application for an Operating License for

Braidwood Units 1 and 2. In determining whether an action is within the appropriate scope of the Commission's jurisdiction under the National Environmental Policy Act (NEPA), the issue is whether there is a sufficient nexus between the action in question and the operation of a nuclear reactor, so as to require prior approval from the Commission. Kansas Gas and Electric Company (Wolf Creek Nuclear Generating Station, Unit No. 1), CLI-77-1, 5 NRC 1, 9-11 (1977). "Under the 'rule of reason' applicable under NEPA, [the Commission] has discretion to draw lines of this kind from a common-sense standpoint." Id.

It has long been settled that there is sufficient nexus between a nuclear facility and the construction and operation of transmission lines required to transmit its output, so that the Commission must evaluate the environmental impacts of such transmission lines. In Detroit Edison Company (Greenwood Energy Center, Units 2 and 3), ALAB-247, 8 AEC 936, 939 (1974), the Appeal Board concluded that for purposes of NEPA review such transmission lines must be regarded as an integral part of the nuclear generating facility. In Greenwood the applicant contended that although the transmission lines in question would be connected to the nuclear facility they were not directly related to it, but were instead required by the applicant's need to strengthen its power grid. The Appeal Board observed that if this were so the lines would arguably not be attributable to the facility. The Appeal Board remained

unpersuaded, however, because the Applicant could not state that identical power lines along identical routes would be erected irrespective of the facility. 8 AEC at 939.

On the other hand, when the Commission concludes that a proposed transmission line is not associated with a nuclear facility being licensed, it does not evaluate the environmental impacts of the line. In Tennessee Valley Authority (Hartsville Nuclear Plant, Units 1A, 1B, 2A and 2B), LBP-76-16, 3 NRC 485 (1976), the Licensing Board evaluated the environmental impacts of the transmission lines designed to serve the facility. The Board declined to extend this scrutiny, however, to another transmission line which "was originally reported to be made necessary by the Hartsville facility." 3 NRC at 530. The Board found that "[a]s clarified, the...line is required for overall system reliability prior to operation irrespective of whether the plant is constructed." Id. The Board accordingly found that the line "is not associated with the plant, and therefore is not within the subject matter of this proceeding." Id.

The fact pattern in a third decision fell somewhere in between those of Greenwood and Hartsville. In Virginia Electric and Power Company (North Anna Nuclear Power Station, Units 1 and 2), LBP-75-70, 2 NRC 879 (1975), the Licensing Board evaluated the environmental impacts of a proposed power line required to deliver the output of the nuclear plant. The

Board, however, "put no weight on the possibility that the Applicant might, in the future, construct" another transmission line along part of the same route. 2 NRC at 891. Although the facts are not entirely clear from the Licensing Board's opinion, the applicant apparently planned to divert some of the power from the plant to this line if load growth patterns warranted it. The record showed that construction of such a line along part of the route was likely in the near future, but the date at which increased demand would require that it be extended farther and whether it would terminate at the same place as the proposed line were "highly uncertain." Id. The Licensing Board therefore did not consider the environmental effects of this future line. The Board also gave no weight to the fact that the applicant had already purchased the right-of-way for this additional line along much of the proposed route, believing that "business judgments by the Applicant should [not] be used as levers to influence a decision on environmental matters." Id. */

---

*/ The Licensing Board did, however, limit the Applicant's ability to clear the right-of-way, which was forested, to the width needed for the transmission line whose impacts it evaluated, until such time as the applicant received the necessary state approvals for the future line. On reconsideration requested by the Staff, the Board explained that it had not meant to decide the question whether NRC approval would be needed in the future before the line was constructed. Virginia Electric and Power Company (North Anna Power Sation, Units 1 and 2), LBP-76-1, 3 NRC 37 (1976).

(Continued on following page)

These decisions demonstrate that the Applicant's plans for a future 765kV transmission line are not appropriately within the scope of the Commission's NEPA jurisdiction in this operating license proceeding. It is clear from Mr. Getty's affidavit that the future 765kV line should not be considered to be associated with Braidwood Units 1 and 2. Under the standard set by Greenwood and Hartsville, the line is not required to transmit power from those units. A 765kV line in the vicinity of Braidwood will be built only if required to transmit the output of additional units that may be constructed at the Braidwood site or at nearby stations. Moreover, in North Anna the future line was planned to transmit power from the units being licensed. The Licensing Board, nonetheless, declined to consider its environmental impacts in the operating license proceeding because of the contingent and uncertain nature of the applicant's plans.

The only way that the 765kV line could be held to be within the Commission's NEPA jurisdiction in this proceeding would be to suggest that the mere acquisition of a right-of-way in connection with proposed structures not

---

*/ (Continued from previous page)

Because the future transmission line was apparently planned to deliver power from the units being licensed, the Licensing Board arguably had authority to impose this condition even though it determined that the environmental effects of the line were not appropriate for consideration in the licensing proceeding. The situation is otherwise here, because the Applicant has no plans ever to construct the 765kV line in association with Braidwood Units 1 and 2.

associated with the project under consideration invokes the Commission's NEPA jurisdiction. There is no support for this suggestion in the Commission's case law. As noted, the North Anna Licensing Board held that the applicant's purchase of rights-of-way for a future transmission line should not be used as a lever to influence a decision on environmental matters. 2 NRC at 891. The Commission's decision in Wolf Creek, supra, is in accord. The Commission observed there that the acquisition of land "would appear to be an activity which would not require advance Commission approval." 5 NRC at 11. Section 50.10 of the Commission's regulations does not require an applicant to receive prior approval before acquiring a site for a nuclear facility and the Commission accordingly does not perform an environmental assessment before site acquisition. See Gage v. AEC., 479 F.2d 1214 (D.C. Cir. 1973). The acquisition of the right-of-way in itself, therefore, does not provide the requisite nexus between Applicant's very uncertain plans for a 765kV transmission line associated with future units and the operation of Braidwood Units 1 and 2. That nexus must be provided by the activities that the applicant proposes to conduct subsequent to acquisition of the land.

The Applicant's reference to the future 765kV line in its Environmental Report may have raised the implication that the environmental effects of the line should be considered in connection with its application for an Operating License.

Applicant has now amended the Environmental Report to dispel that implication. In the Staff's environmental review of the application, the Staff gave only secondary consideration to the line because of the uncertainty about when or whether it would be built. The Staff's Final Environmental Statement accordingly does not consider electric field strengths and other environmental effects of the 765kV line that the Contention seeks to place in issue. (Deposition of Staff Witness Edwin D. Pentecost, May 16, 1985, Tr. 60-61.) The Licensing Board in Hartsville, supra, found that although it was originally reported that the transmission line in question was made necessary by the facility being licensed, subsequent clarification showed that it was not. The Board therefore held that the environmental effects of the line were not an issue in the proceeding. The Licensing Board in this case should reach the same conclusion.

In discharging its NEPA responsibilities, the Commission must examine environmental effects of the project under review which are reasonably foreseeable; it need not consider mere possibilities unlikely to occur as a result of the proposed activity. Philadelphia Electric Company (Limerick Generating Station, Units 1 and 2), ALAB-262, 1 NRC 163, 193 (1975). Here there is no ground for NEPA review of the environmental effects of a 765kV transmission line, because it is clear that no such effects will result from the project under review, which is the operation of Braidwood Units 1 and 2.

In sum, there is no material issue of fact to litigate under Neiner Contention 1 in this operating license proceeding. The environmental effects of a future 765kV transmission line are beyond the scope of the Licensing Board's jurisdiction in this proceeding and the Applicant is entitled to summary disposition of the Contention as a matter of law.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	Docket Nos. 50-456
COMMONWEALTH EDISON COMPANY	)	50-457
	)	
(Braidwood Nuclear Power Station, Units 1 and 2)	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of MOTION FOR SUMMARY DISPOSITION (with attachments entitled NEINER CONTENTION 1 and ROREM SUBCONTENTION 1(c)) were served on the persons listed below and identified with an asterisk by Federal Express, except that Mr. Cassel will be served by hand delivery the following day, and the remaining persons listed below by depositing same in the United States mail, first-class postage prepaid, this 13th day of June, 1985.

* Lawrence Brenner, Esq.
Chairman
Administrative Law Judge
Atomic Safety and Licensing Board
United States Nuclear Regulatory Commission
Washington, DC 20555

* Dr. Richard F. Cole
Administrative Law Judge
Atomic Safety and Licensing Board
United States Nuclear Regulatory Commission
Washington, DC 20555

* Dr. A. Dixon Callihan
Administrative Law Judge
102 Oak Lane
Oak Ridge, TN 37830

* Myron Karman, Esq.
Elaine I. Chan, Esq.
Office of the Executive Legal Director
United States Nuclear Regulatory Commission
Washington, DC 20555

Atomic Safety and Licensing Board Panel
United States Nuclear Regulatory Commission
Washington, DC 20555

Atomic Safety and Licensing Appeal Board Panel
United States Nuclear Regulatory Commission
Washington, DC 20555

Mr. William L. Clements
Chief, Docketing and Services
United States Nuclear Regulatory Commission
Office of the Secretary
Washington, DC 20555

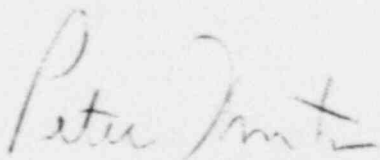
Douglass W. Cassel, Jr.
Timothy W. Wright, III
BPI
109 North Dearborn Street
Suite 1300
Chicago, IL 60602

* C. Allen Bock, Esq.
P.O. Box 342
Urbana, IL 61801

Ms. Lorraine Creek
Route 1
Box 182
Manteno, IL 60950

* Ms. Bridget Little Rorem
117 North Linden Street
P.O. Box 208
Essex, IL 60935

Charles Jones, Director
Illinois Emergency Services and Disaster Agency
110 East Adams
Springfield, IL 62705



PETER THORNTON
One of the Attorneys for
COMMONWEALTH EDISON COMPANY

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

Peter Thornton
Rebecca J. Lauer
ISHAM, LINCOLN & BEALE
Three First National Plaza
Chicago, Illinois 60602
(312) 558-7500