

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

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

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

Docket Nos. 50-456^{OL}
50-457

June 21, 1985

SERVED JUN 24 1985

ORDER RECONSIDERING ADMISSION OF NEINER
FARMS CONTENTION 4 (RAILROAD EXPLOSION)

The Board is in essential agreement with Applicant's Objections, at 4-7 (April 29, 1985) and the NRC Staff's Response, at 6-11 (May 20, 1985), that paragraph (c) of Neiner Farms' Contention 4 is barred from litigation in this proceeding by 10 C.F.R. § 50.13(a). Accordingly, the Board now rules that Neiner Contention 4(c) is rejected as an issue in controversy.

The Board is in essential agreement with the Staff that Applicant's other objections to the entire Contention 4 are not well-founded. See Staff Response, at 3-6; Applicant's Objections, at 2-4. Applicant claims that all parts, (a) (b) and (c), of the contention are barred by Section 50.13(b). We hold that the alleged railroad shipments which are the subject of the contention are not a "use or deployment of weapons

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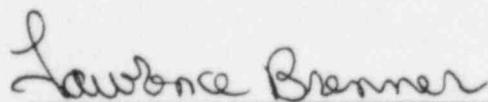
incident to U.S. defense activities," given the meaning of the words and the purpose of the regulation. Therefore, Neiner Farms Contention 4(a) and (b) remain as issues in controversy in this proceeding.

The Board will issue a future memorandum and order which more fully sets forth the reasons for the rulings announced in this order.

The parties have reported that settlement negotiations on Neiner Contention 4 are in progress. Status Report, at 2 (May 31, 1985). If the contention is not settled, the Board has some concern that given our prior ruling on the inapplicability of collateral estoppel, the present wording of Contention 4(a) and (b) does not accurately identify what is truly in controversy. The parties shall continue to pursue the possibility of settlement and shall also discuss whether the wording of the contention should be modified. The parties shall report to the Board on these matters by a received date of July 12, 1985.

IT IS SO ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD


Lawrence Brenner, Chairman
ADMINISTRATIVE JUDGE

Bethesda, Maryland
June 21, 1985