635

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

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

OL

NRC STAFF'S RESPONSE TO THE
COMMISSION'S ORDER OF MARCH 20, 1986

Stuart A. Treby
Assistant Chief Hearing Counsel

April 2, 1986

D507

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

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

NRC STAFF'S RESPONSE TO THE COMMISSION'S ORDER OF MARCH 20, 1986

Stuart A. Treby
Assistant Chief Hearing Counsel

April 2, 1986

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

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

NRC STAFF'S RESPONSE TO THE COMMISSION'S ORDER OF MARCH 20, 1986

Stuart A. Treby
Assistant Chief Hearing Counsel

April 2, 1986

TABLE OF CONTENTS

TABLE OF CITATIONS

PAGE(S)

NRC CASES

REGULATIONS

MISCELLANEOUS

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

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

NRC STAFF'S RESPONSE TO THE
COMMISSION'S ORDER OF MARCH 20, 1986

I. INTRODUCTION

On March 20, 1986, the Commission issued an order [1/] in which it posed two questions to the parties to this proceeding to assist the Commission in determining whether the Intervenors' amended quality assurance contention meets the five-part test of 10 C.F.R. § 2.714 for the evaluation of late-filed contentions. The Commission's questions are:

> (1) Did the Licensing Board apply the five-part test correctly in admitting the intervenors' amended quality assurance contention?
>
> (2) If the intervenors' contention were to be rejected, and then were to be resubmitted today, would the contention satisfy the five-part test, if it were judged in light of all the information which has developed in the course of the proceeding to date?

Order, slip op. at 11-12.

For the reasons discussed below, the Staff submits that the answer to the first question is that the Licensing Borard did not balance the five

---

1/ Commonwealth Edison Company, (Braidwood Station, Units 1 and 2), Order, ____ NRC ____ (March 20, 1986) (hereinafter cited as "Order").

factors correctly. With respect to the Commission's second question, in the Staff's view, only the portion of Intervenors' contention identified as Subpart 2C (which relates to harassment and intimidation of Comstock QC inspectors) would meet the five-part test of 10 C.F.R § 2.714; all other subparts of the amended quality assurance contention would not meet the five-part test.

II. DISCUSSION

A. The Commission's Regulations and Case Law Applicable To The Five-Part Test For Weighing Admission Of A Late-Filed Contention

A petitioner seeking the admission of a late-filed contention must address the five factors specified in 10 C.F.R. § 2.714(a)(1)(i-v) and affirmatively demonstrate that, on balance, they favor the admission of the contention into the proceeding. Duke Power Co. (Perkins Nuclear Station, Units 1, 2, and 3), ALAB-615, 12 NRC 350, 352 (1980); see Nuclear Fuel Services, Inc. (West Valley Reprocessing Plant), CLI-75-4, 1 NRC 273, 275 (1975). The factors are:

(i) Good cause, if any, for failure to file on time;

(ii) The availability of other means whereby the petitioner's interest 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 petitioner's interest will be represented by existing parties; and

(v) The extent to which the petitioner's participation will broaden the issues or delay the proceeding.

10 C.F.R. § 2.714(a)(1).

The Commission has emphasized that licensing boards are to apply the lateness requirements of 10 C.F.R. § 2.714(a)(1) in determining whether a late-filed contention should be admitted. See Pacific Gas & Electric Co. (Diablo Canyon, Units 1 and 2), CLI-81-5, 13 NRC 361, 364 (1981). The burden is on the petitioner to demonstrate that a balancing of these five factors is in its favor. See e.g., Boston Electric Co. (Pilgrim Nuclear Power Station), ALAB-815, 22 NRC 461, 466 (1985).

The first factor in 10 C.F.R. § 2.714(a)(1) is whether there is good cause for the filing delay. The Appeal Board has articulated a three-part test for good cause for cases where a late-filed contention is based on the contents of a document that was not previously available. Duke Power Co., et al., (Catawba Nuclear Station, Units 1 and 2), ALAB-687, 16 NRC 460, 468-70 (1982). This three-part test requires that the late-filed contention:

1. be wholly dependent upon the contents of the document;

2. could not have been advanced with any degree of specificity (if at all) in advance of the public availability of that document; and

3. be tendered promptly once the document comes into existence and is available for public examination.

The Commission has approved this three-part good cause test. Duke Power Co., et al, CLI-83-19, 17 NRC 1041 (1983). The Commission has stated that the institutional unavailability of a licensing-related document does not establish good cause for filing a contention late if information was publicly available early enough to provide the basis for

the timely filing of that contention. Id. at 1045. Furthermore, an intervenor is required to diligently uncover and apply all publicly available information necessary to formulate its contentions in a timely fashion. Id. at 1048; Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1) LBP-84-30, 20 NRC 426, 439 (1984).

With regard to the second factor (the availability of other means whereby a petitioner can protect its interest) and the fourth factor (the extent to which other parties will represent that interest), the Appeal Board has observed that these factors are accorded relatively less weight than the other three factors in 10 C.F.R § 2.714(a)(1). South Carolina Electric & Gas Co. (Virgil C. Summer Nuclear Station, Unit 1), ALAB-642, 13 NRC 881, 895 (1981); Detroit Edison Co. (Enrico Fermi Atomic Power Plant, Unit 2), ALAB-707, 16 NRC 1760, 1767 (1982); Mississippi Power & Light Co. (Grand Gulf Nuclear Station, Units 1 and 2), ALAB-704, 16 NRC 1725, 1730-31 (1982). In fact, the Appeal Board has stated that it is "most difficult to envisage a situation in which [these two factors] might serve to justify granting intervention to one who fails to make an affirmative showing on the other three factors." Summer, supra, 13 NRC at 895.

The third factor, the extent to which petitioner can assist in developing a sound record, is accorded significant weight when balancing the factors in 10 C.F.R. § 2.714(a)(1). The Commission's case law indicates that the proponent of an untimely contention must affirmatively demonstrate that it has special expertise which could aid in developing a sound record. See Shoreham, supra, ALAB-743, 18 NRC at 399-400; Summer, supra, at 892-93; Cincinnati Gas & Electric Co. (William H.

Zimmer Nuclear Station), LBP-80-14, 11 NRC 570, 576 (1980). The petitioner is required to "set out with as much particularity as possible the precise issues it plans to cover, identify its prospective witnesses and summarize its proposed testimony. Vague assertions regarding petitioner's ability . . . are insufficient." Grand Gulf, supra, 16 NRC at 1730; see Washington Public Power Supply System (WPPSS Nuclear Project, No. 3), ALAB-747, 18 NRC 1167, 1177-78, 1181 (1983); 18 NRC at 1182-83 (concurring opinion of Judge Edles).

The fifth factor, the extent to which a petitioner's participation will broaden the issues or delay the proceeding, also is given significant weight in balancing the factors of 10 C.F.R. § 2.714(a)(1). The Commission's case law indicates that only the delay to the proceeding attributable directly to the tardiness of the petitioner is to be taken into account in applying this factor. West Valley, supra, 1 NRC at 276; Long Island Lighting Co, (Jamesport, Units 1 and 2), ALAB-292, 2 NRC 631, 650 and n.25 (1975).

The Staff has applied the foregoing principles in responding to the Commission's two questions. The Staff's analysis is set forth below.

B. The Licensing Board Incorrectly Applied The Five-Part Test In Admitting The Intervenors' Amended Quality Assurance Contention

On March 7, 1985, Intervenors moved for leave to file a late-filed quality assurance contention. Because the contention was filed long after the January 15, 1979 deadline [2/], the Board was required to evaluate the contention under the standards set forth in 10 C.F.R. § 2.714(a)(1) and consistent with applicable NRC case law. The Licensing Board found that information was available to the public as early as August 1, 1984 to enable Intervenors to propound the essential elements of their proposed quality assurance contention. LBP-85-11, 21 NRC at 628-29. Accordingly, the Licensing Board found that Intervenors had not prevailed in showing good cause and the burden as to the other four factors was substantially increased. Id. at 629. When Intervenors submitted their amended quality assurance contention on May 24, 1985, it was recognized by all parties and the Licensing Board that Intervenors could not show good cause for its late filing; accordingly, this factor was not even addressed by the Licensing Board. Rather, the Licensing Board merely stated that it adhered to its conclusion in the Special Prehearing Conference Order (21 NRC at 628-29) that good cause was not shown for Intervenors' tardiness in submitting the quality assurance contention and weighed this factor against admitting the contention. LBP-85-20, 21 NRC at 1748. The Staff concurs in the Licensing Board's finding on this factor.

2/ The Notice of Hearing was published in the Federal Register on December 15, 1978. 43 Fed. Reg. 58659.

The Licensing Board determined that the second factor (whether there are any other means of protecting Intervenors' interest) and the fourth factor (whether existing parties would adequately represent Intervenors' interest) weighed in Intervenors' favor. The Staff does not dispute these determinations by the Licensing Board.

The Staff, however, does dispute the determinations made by the Licensing Board regarding the third and fifth factors. The third factor concerns the extent to which a petitioner's participation may be expected to assist in developing a sound record. The Staff consistently has argued that Intervenors made no affirmative showing on this factor in their May 24, 1985 Motion to Admit the Amended Quality Assurance Contention. Having again reviewed the Intervenors' motion and the Licensing Board's decision, the Staff maintains that the Board incorrectly weighed this pivotal factor in Intervenors' favor.

As noted in the above discussion of NRC case law, one way in which a petitioner can show it would contribute to the development of a sound record is by identifying the witnesses it intends to call and the subjects that would be addressed in their testimony. Notwithstanding the Licensing Board's suggestion in its Special Prehearing Conference Order (LBP-85-11, 21 NRC 609) that Intervenors make such a showing in order to prevail on this factor, Intervenors failed to do so. Yet, despite the lack of any showing by Intervenors, the Licensing Board assumed that they would contribute to the development of a sound record. The Board attempted to support this assumption by asserting that the law firm representing Intervenors in this proceeding had helped develop a full

record in the Byron proceeding, but the Board did not specify how they had done so.

The Board also noted that the failure to identify witnesses and specify the subjects of their testimony did not absolutely preclude an intervenor from prevailing on this factor because an intervenor could contribute to the development of a sound record through cross-examination by its legal counsel. LBP-85-20, 21 NRC at 1745. This statement, however, was merely speculative because the Board did not attempt to draw any connection between the general principle and the likelihood of effective cross-examination by Intervenors' counsel in this proceeding. A relevant consideration in this regard is whether Intervenors will have expert assistance in their cross-examination. Duke Power Co. (Atlanta Nuclear Station, Units 1 and 2), LBP-84-24, 19 NRC 1118, 1586 n.50 (1984). Intervenors made no showing that they would have such expert assistance.

The error in the Board's assumption is further underlined by the nature of the amended quality assurance contention itself. With the exception of one issue involving harassment of one contractor's quality control inspectors, Intervenors' entire contention consists of extracts, generally verbatim, from NRC Staff inspection reports. A contention consisting of old information developed by the regulatory staff does not give any promise that Intervenors will contribute to the development of a sound record. The Staff does not concede that Intervenors, through cross-examination by their counsel, will explore the deficiencies identified by the Staff better than the Staff itself has done in the past and will continue to do in the future.

Thus the Licensing Board's assumption that Intervenors had prevailed on the third factor was erroneous because the Board was not guided by accepted criteria in evaluating Intervenors' ability to contribute to the development of a sound record (e.g. identification of witnesses and the specification of the subjects of their testimony, or at least an indication from the contention itself that Intervenors had significant issues to bring to the Commission's attention). Ignoring these criteria, the Board erroneously relied on the unsupported assumption that Intervenors' counsel had made a significant contribution in the Byron proceeding. 3/ In sum, the Licensing Board's determination that the third factor weighed in favor of the Intervenors was contrary to the facts before it and contrary to NRC case law. The Staff's position is that the Licensing Board incorrectly concluded that the third factor weighed in Intervenors' favor.

Finally, the Licensing Board was incorrect in determining that Intervenors should prevail on the fifth factor which concerns the extent to which entertaining the late-filed contention would broaden the issues or delay the proceeding. 21 NRC at 1749. Intervenors' amended quality

---

3/ The Staff notes that the validity of this assumption has been questioned by Applicant in previous filings in which it quotes Judge Smith's complaint that BPI, the law firm representing Intervenors here, had "raise[d] every conceivable issue" and then failed to act affirmatively to litigate them, instead expecting the Board to "untangle it." May 30, 1984 Byron Transcript at 8173-8180. The Licensing Board acknowledged Judge Smith's criticism but indicated it did not believe the criticism negated the service performed by Intervenors' attorneys in pointing up quality assurance deficiencies at Byron. Further, the Board stated its intention to "manage this case" and through Board requirements "limit the problem of unfocused litigation which arose in Byron." 21 NRC at 1747.

assurance contention is 31 pages long, alleges multiple violations of 12 of the Commission's 18 quality assurance criteria in 10 C.F.R. Part 50, Appendix B and will require an examination of the adequacy of some of Applicant's extensive corrective action programs. No other quality assurance contention had been admitted in the proceeding. In these circumstances, it is clear that litigation of Intervenors' quality assurance contention necessarily would occasion an expansion of the issues and delay the completion of the proceeding.

Balancing the five factors, the Staff maintains that the weight of the factors did not lie in favor of admitting Intervenor's amended quality assurance contention. Of the five factors required to be considered by the Licensing Board under 10 C.F.R § 2.714(a)(1), only the second and fourth factors weighed in favor of admitting the contention. As noted in Section A above, it is well established in NRC case law that these two factors are of little weight in determining whether a late-filed contention should be admitted. The three controlling factors are the first, the third and the fifth. As the Licensing Board found, Intervenors' delay in filing the quality assurance contention was inexcusable, making their burden on the other factors much heavier. For the reasons discussed above, Intervenors did not make a persuasive showing that it could contribute to the development of a sound record. Moreover, admission of the contention expands the issues and delays the completion of the proceeding. Accordingly, pursuant to Commission regulations and case law, the amended quality assurance contention should have been rejected. The Licensing Board's contrary decision was incorrect.

C. Except for Subpart 2C Which Relates to Harassment and Intimidation of Comstock QC Inspectors, The Intervenors Amended Quality Assurance Contention Would Not Satisfy The Five-Part Test Even If Judged In Light of All The Information Which Has Developed In The Course Of The Proceeding

Except for Subpart 2C, the Intervenors' amended quality assurance contention was admitted by the Licensing Board on June 21, 1985. Memorandum and Order, LBP-85-20, 21 NRC 1732 (1985). A determination on Subpart 2C was deferred pending a subsequent filing by Intervenors. A subsequent filing was made by Intervenors and the parties stipulated as to admissible language for Subpart 2C. The Licensing Board approved the stipulation and Subpart 2C was admitted as a contention on July 23, 1985. See July 23, 1985 Prehearing Conference Transcript at 208-209.

Since the admission of the amended quality assurance contention, the parties have engaged in extensive discovery. That discovery has resulted in the production of many hundreds of documents, multi-sets of interrogatories to each of the parties and ongoing depositions. To date, more than forty persons have been deposed over a period in excess of sixty days, amounting to more than 9,000 transcript pages. It is against this backdrop of information that the Staff has considered the Commission's second question, i.e., whether the amended quality assurance contention, if resubmitted and evaluated today, would meet the five-factors test set out in 10 C.F.R. § 2.714(a)(1). In discussing the Commission's second question, the Staff will address Subpart 2C separately from the remainder of the amended quality assurance contention.

1. Intervenors Amended Quality Assurance Contention Other Than Subpart 2C

The Staff submits that under a proper interpretation of the Commission's regulation and case law discussed in Section A above, Intervenors could not support readmission of the amended quality assurance contention with regard to the five-part test governing the admission of late-filed contentions set forth in 10 C.F.R. § 2.714(a)(1). As discussed more fully below, the information developed since the contention was admitted indicates that Intervenors shou'd not prevail on any of the three controlling factors, i.e., the first, third, and fifth factors, and that the balancing of the five factors would dictate rejection of the amended quality assurance contention if it was resubmitted today.

Every Commission adjudicatory body which has looked at the good cause factor for the late filing of Intervenors' quality assurance contention has determined that good cause for the tardiness of Intervenors' filing does not exist. It is virtually indisputable, therefore, that Intervenors could not show good cause for the late-filing of a resubmitted quality assurance contention. Further, all the information developed during discovery on this contention is merely supplementary to the collection of findings from NRC Staff inspection reports issued over the years. The information developed includes more details regarding the list of deficiencies noted in those inspection reports, the corrective actions proposed and undertaken by Applicant, and further inspection efforts pursued by the Staff with respect to these matters. Thus, the information developed through discovery does not provide an independent basis for raising the Intervenors' quality assurance contention anew but merely fleshes out the facts regarding the numerous issues raised in the contention. The good cause factor weighs against Intervenors. Under

Commission case law, Intervenors' burden under the other four factors is substantially increased.

The Staff concedes that the second and fourth factors should be weighed in the Intervenors' favor. However, the Staff observes that with regard to the second factor (whether there are any other means of protecting Intervenors' interest), the only interest Intervenors appear to be asserting is one of being assured that the Braidwood facility is constructed in accordance with applicable quality criteria set forth in 10 C.F.R. Part 50, Appendix B. The amended quality assurance contention, as well as the information developed to date through discovery, indicates that the only information Intervenors possess which remotely indicates that the Braidwood facility is not so constructed derives from past Staff inspection reports noting noncompliances with certain of these criteria. However, Intervenors' interest is protected by the continuing oversight exercised by the Staff in assuring that any deficiencies identified are resolved before an operating license is issued. Thus, while these factors traditionally are weighed in favor of a petitioner seeking to raise a late-filed contention, in the circumstances of this case it appears that very little weight should be accorded the second factor were Intervenors to resubmit their contention.

Similarly, with respect to refiling their amended quality assurance contention, Intervenors would not prevail under the third factor which concerns the extent to which their participation may be expected to assist in developing a sound record. As the Staff has previously noted in this pleading and in pleadings throughout this proceeding, Intervenors' contention (with the exception of Subpart 2C) is merely a collection of

extracts, generally verbatim, of deficiencies in Applicant's quality assurance activities noted by Staff inspectors in inspection reports that have been issued over the years. A contention consisting of old information developed by the Staff does not give any promise that Intervenors will contribute to the development of a sound record. Notwithstanding vague assertions throughout the proceeding to date that they would retain or acquire expert witnesses or assistance, Intervenors have not identified a single expert (or any other person) who would testify or assist Intervenors on any of the issues (other than Subpart 2C) raised in this contention. Rather, Intervenors state that they intend to call Applicant and/or Staff personnel for testimony in the event such personnel are not called as witnesses as part of the other parties' direct case. See Intervenors' Identification of QA Witnesses (February 28, 1986). Thus, what the discovery indicates is that the Intervenors, through cross-examination by their counsel, will explore the deficiencies identified by the Staff, the corrective actions taken by the Applicant, and the continuing follow-up by the Staff. It appears this cross-examination will be conducted primarily, if not exclusively, by Intervenors' lead counsel without the assistance of any experts. While Commission case law recognizes that a party can make its case by cross-examination, at least one licensing board in considering this factor indicated that a relevant consideration is whether Intervenors would have expert assistance in this cross-examination. Duke Power Co. (Atlantic Nuclear Station, Units 1 and 2), LBP-84-24, 19 NRC 1418, 1586 n. 50 (1984). Based on the extensive discovery to date and particularly the more than 9,000 pages of deposition transcript developed, the Staff's

assessment is that Intervenors' counsel, through cross-examination, may flesh out some of the details regarding the identification and resolution of quality assurance deficiencies identified in Staff inspection reports, but that he will not bring significant new issues to the Commission's attention. Rather, an extensive evidentiary record will be compiled concerning matters already identified by the Staff and which the Staff has pursued as part of its normal regulatory activities. Intervenors' contribution by cross-examining the other parties' witnesses, while it may create a substantial record, will not generate any significant new information to the public which is not already available in the public document rooms in the form of Staff inspection reports and correspondence between the Staff and Applicant. Staff submits that if Intervenors resubmitted their contention, they could not prevail on the third factor.

Finally, if Intervenors resubmitted their amended quality assurance contention today, they would not prevail on the fifth factor (the extent to which their participation would broaden the issues or delay the proceeding). The amended quality assurance contention is 31 pages long and contains over 65 subparts. Litigation of this contention, based on the time taken for depositions, could extend over several months. At this point of the proceeding, this is the only matter remaining to be litigated. The only other admitted contention (relating to an emergency planning issue) has been fully litigated and the record was closed on March 12, 1986. Thus, this is a clear case where the admission of a contention would materially expand the issues and delay completion of the proceeding. This factor weighs against admission of the contention.

On balancing the five factors, the Staff concludes that the weight of the factors is against admission of a resubmitted contention. With regard to the three controlling factors, the first, the third, and the fifth, the passage of time and the events which have occurred during discovery indicate that the case for rejecting the Intervenors amended quality assurance contention should it be resubmitted, would be even stronger than it was at the time the contention was initially filed. For the reasons discussed above, Intervenors' actions to date and their anticipated contribution through conduct of cross-examination, are not sufficient to demonstrate that they could contribute to the development of a sound record. Moreover, there is no clearer case in which admission of a contention would expand the issues and delay the proceeding. Accordingly, pursuant to Commission regulations and case law, a resubmitted version of Intervenors' amended quality assurance contention should be rejected.

2. The Five-Part Test Of 10 C.F.R. § 2.714(a)(1) Would Weigh In Favor Of Admission Of A Resubmitted Contention Consisting Of Subpart 2C

In Part II-C(1) above, the Staff set forth its analyses of the five-part test for late-filed contentions as it would apply to a resubmitted amended quality assurance contention. The Staff expressly excluded Subpart 2C from that discussion because of two distinguishing characteristics. First, the first factor relating to good cause for late-filing the contention would weigh in favor of the Intervenors. Information relating to this issue, while alluded to in NRC Inspection Report Nos. 50-456/84-34 and 50-457/84-32, was not publicly available until the deposition of

Mr. Warnick on May 20, 1985. Therefore, Intervenors could not be charged with failure to diligently uncover and apply all publicly available information necessary to formulate this part of their contention before that deposition. In any event, all parties have stipulated to admission of this issue and that stipulation was approved by the Licensing Board. See July 23, 1985 Prehearing Conference Tr. at 208-209.

This issue also is distinguishable from the remainder of the Intervenors' contention in that Intervenors could make a more persuasive showing on the third factor. As noted in Section A above, the accepted touchstones for an intervenor's ability to contribute to the development of a sound record include the identification of witnesses and the specification of the subjects of their testimony. With regard to Subpart 2C, Intervenors have identified three experts they intend to offer as witnesses. (See "Intervenors' Identification of QA Witnesses" at 3 (February 28, 1986)). Presumably these witnesses also will be available to assist Intervenors in preparing cross-examination of Staff and Applicant witnesses on that issue. For these reasons, the Staff concludes that the third factor would weigh in favor of Intervenors on this issue.

On balancing the five factors required to be considered under 10 C.F.R. § 2.714(a)(1), the Staff concludes that the weight of the factors favors admission of a resubmitted Subpart 2C. Of the five factors, only the fifth factor (relating to expanding the issues and delay of the proceeding) would be weighed against admission of Subpart 2C. Accordingly it is the Staff's view that under the Commission's regulations and caselaw, Subpart 2C would be admissible if resubmitted by Intervenors.

III. CONCLUSION

In response to the Commission's questions and for the reasons discussed above, the Staff submits that (1) the Licensing Board incorrectly applied the five-part test in admitting the Intervenors' amended quality assurance contention and (2) if the Inervenors' contention was resubmitted today, only the portion of the contention identified as Subpart 2C (relating to harassment and intimidation of Comstock QC inspectors) would meet the five-part test of 10 C.F.R. § 2.714(a)(1); no other portions of the Intervenors amended quality assurance contention would meet the five-part test.

Respectfully submitted,

Gregory Alan Berry
for Stuart A. Treby
Assistant Chief Hearing Counsel

Dated at Bethesda, Maryland
this 2nd day of April, 1986

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

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

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF RESPONSE TO THE COMMISSION'S ORDER OF MARCH 20, 1986 ORDER" in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class, or, as indicated by an asterisk, through deposit in the Nuclear Regulatory Commission's internal mail system, this 2nd day of April, 1986:

Herbert Grossman, Esq., Chairman
Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555

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

Dr. Richard F. Cole
Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Michael I. Miller, Esq.
Rebecca J. Lauer, Esq.
Isham, Lincoln & Beale
Three First National Plaza
Suite 5200
Chicago, IL 60602

Commonwealth Edison Company
ATTN: Cordell Reed
Assistant Vice President
P.O. Box 767
Chicago, IL 60690

Region III
U.S. Nuclear Regulatory Commission
Office of Inspection & Enforcement
799 Roosevelt Road
Glen Ellyn, IL 60137

Joseph Gallo, Esq.
Isham, Lincoln & Beale
Suite 1100
1150 Connecticut Avenue, N.W.
Washington, DC 20036

Douglass W. Cassel, Jr., Esq.
Timothy Wright, Esq.
Robert Guild, Esq.
109 North Dearborn Street
Suite 1300
Chicago, IL 60602

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

Lorraine Creek
Route 1, Box 182
Manteno, IL 60950

H. Joseph Flynn, Esq.
Associate General Counsel
FEMA
500 C Street, S.W., Suite 480
Washington, DC 20472

Herzel H. E. Plaine*
General Counsel
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Samuel J. Chilk*
Secretary of the Commission
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Atomic Safety and Licensing Board
Panel*
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Atomic Safety and Licensing Appeal
Board Panel*
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Docketing and Service Section*
Office of the Secretary
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Ms. Bridget Little Rorem
117 North Linden Street
Essex, IL 60935

George L. Edgar, Esq.
Newman & Holtzinger, P.C.
1615 L Street, N.W.
Suite 1000
Washington, DC 20036

Gregory Alan Berry
Counsel for NRC Staff