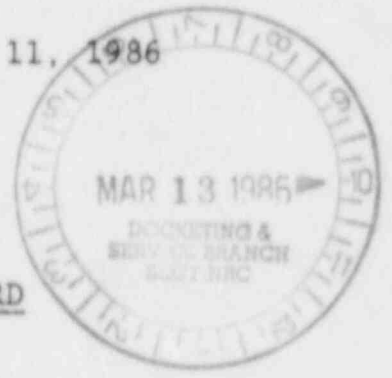


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March 11, 1986

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION



BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

Docket Nos. 50-456 /oc
50-457

INTERVENORS' MOTION TO COMPEL DISCOVERY

Pursuant to 10 CFR §2.740(f), Intervenors Bridget Little Rorem, et al., move to compel discovery from Applicant Commonwealth Edison Company with respect to certain portions of Intervenors' Quality Assurance Interrogatories and Requests to Produce, Third Set, filed January 24, 1986. An order compelling discovery is required on the grounds that the matters sought are relevant to the subject matter of this proceeding, are not privileged, and are necessary for the preparation of Intervenors' case. Intervenors believe that the evidence sought is solely in the control of Edison and is not obtainable by any other means.

Counsel for Intervenors and for Applicant have conferred in an effort to resolve disputes arising from the third set of interrogatories and document requests. Such discussions have

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led to the informal resolution of some disputed matters and efforts continue to resolve others. However, as to the matters which are the subject of this Motion to compel discovery, efforts to reach agreement have been unsuccessful.

Intervenors seek to compel discovery as to specific Interrogatories Nos. 10 and 13, to which Applicant has interposed objections and has provided responses which are incomplete. 10 CFR §2.740(f)(1).

Interrogatory No. 10 reads:

10. Please identify and describe in detail any and all studies, inquiries, reviews or evaluations of the effectiveness of, results and conclusions of the Braidwood Construction Assessment Program (BCAP); the "top twenty" corrective action programs at Braidwood identified in the April 3, 1985, correspondence from David H. Smith to James G. Keppler; and the "Ongoing Corrective Action Program" identified in Appendix B to the BCAP June 1984 program description transmitted by James J. O'Connor to James G. Keppler by letter of June 22, 1984. As to each please detail the purpose and objectives, organization, methodology, procedures, staffing, implementation, results and conclusions of each. Please identify any documents which reflect these answers.

Interrogatory No. 13 reads:

13. Describe in detail any and all work performed by Torrey Pines Technology, or other organization of similar name, with respect to the quality assurance contention, or any corrective action program including but not limited to the Safety-Related Mechanical Equipment corrective action program. As to such work, please detail the purpose and objectives, organization, methodology,

procedures, staffing, implementation, results and conclusions. Please identify any documents which reflect these answers and make available such documents for inspection and copying.

Applicant has objected to these interrogatories on the asserted grounds that the matters included in these interrogatories and associated document requests are "protected by the work product privilege." In its February 11, 1986, Third Partial response to specific Interrogatory 10, Applicant asserts: "[A]pplicant objects to and declines to answer this interrogatory to the extent that it requests identification and descriptions of any studies, inquiries, reviews or evaluations protected by the work product privilege." Id., p. 1. In its First Partial response of February 7, 1986, Applicant asserts: "[T]orrey Pines Technology has been employed at Braidwood exclusively by the law firm of Isham, Lincoln & Beale to provide expert assistance to Isham, Lincoln & Beale in its preparation for litigation of this case. Thus, all work or activities performed by TPT by ILAB are protected by the work product privilege." Id., p. 3.

Intervenors do not seek the disclosure of the mental expressions, conclusions, opinions or legal theories of Applicant's counsel. However, we do seek, and are entitled to discovery of - we believe - the basic facts regarding the effectiveness of the corrective action programs at Braidwood.

Such basic facts which are otherwise discoverable are not immune from disclosure simply because they pass through the hands of counsel.

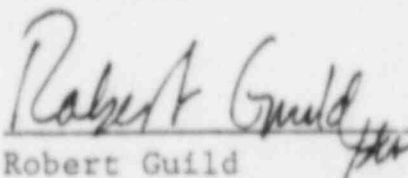
Intervenors understand that the drafts of certain corrective action reports may have been prepared in anticipation of litigation by counsel in some part. If these corrective action reports are to be relied upon by Applicant or the NRC Staff in support of any claim or defense, such draft documents must be discoverable; or in the least, counsel's part in their preparation must be clearly delineated. Intervenors have sought, and Applicant has declined to make available, documents reflecting the nature and scope of Torrey Pines' work regarding the Braidwood corrective action programs and any conclusions reached in its evaluations. We understand that Torrey Pines has performed work regarding the Safety-Related Mechanical Equipment Corrective Action Program which is relevant to the Amended Quality Assurance Contention.

Intervenors believe we are entitled to require Applicant to justify the use of the privilege which it has asserted. Applicant should provide, specifically, the identity and nature of the subject material; the author; the dates of preparation; and the conclusions reached. Any contract or agreement, or document reflecting the scope of work to be performed and the timing of the undertaking should also be disclosed. The need for discovery of the basic facts regarding the effectiveness of the Braidwood corrective action programs is obvious.

Evaluative information solely in the hands of Applicant can not be obtained by any other practical process by Intervenors who lack both the resources to independently derive and access the raw information needed to obtain this vital information by other means. Hickman v. Taylor, 329 U.S. 495, 67 S Ct. 385, 91 L.Ed.2d 451 (1947).

DATED: March 11, 1986

Respectfully submitted,



Robert Guild
One of the Attorneys for
Intervenors Rorem, et al.

Douglass W. Cassel, Jr.
Robert Guild
Timothy W. Wright, III
109 North Dearborn, #1300
Chicago, IL 60602
(312) 641-5570

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NUCLEAR REGULATORY COMMISSION




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CERTIFICATE OF SERVICE

I hereby certify that I have served copies of Intervenor's Motion To Compel Discovery on each party to this proceeding listed on the attached Service List by having said copies placed in envelopes, properly addressed and postaged (first class) and deposited in the U.S. mail at 109 N. Dearborn, Chicago, 60602, on this 11th day of March, 1986; except that counsel for Edison, Mr. Stahl was served by messenger, and NRC counsel Mr. Treby was served via Federal Express overnight delivery.


Robert Guild

BRAIDWOOD SERVICE LIST

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

Richard F. Cole
Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington D.C. 20555

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

Stuart Treby, Esq.
NRC Staff Counsel
U.S. Nuclear Regulatory Commission
7335 Old Georgetown Road
Bethesda, Maryland 20014

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

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

Atomic Safety and Licensing
Board Panel
U.S. Nuclear Regulatory
Commission
Washington D.C. 20555

Atomic Safety and Licensing
Appeal Board
U.S. Nuclear Regulatory
Commission
Washington D.C. 20555

Michael I. Miller, Esq.
Peter Thornton, Esq.
Isham, Lincoln & Beale
Three First National Plaza
Chicago, Illinois 60602

Docketing & Service Section
Office of the Secretary
U.S. Nuclear Regulatory
Commission
Washington D.C. 20555

C. Allen Bock, Esq.
P.C. Box 342
Urbana, Illinois 61801

Bridget Little Rorem
117 North Linden Street
Essex, Illinois 60935

Thomas J. Gordon, Esq.
Waller, Evans & Gordon
2503 South Neil
Champaign, Illinois 61820

Lorraine Creek
Route 1, Box 182
Manteno, Illinois 60950