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~~RELATED CORRESPONDENCE~~

April 30, 1986

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

DOCKETED  
USNRC

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD '86 MAY -5 110:53

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

Docket Nos. 50-456  
50-457

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BRIEF OF INTERVENORS ROREM ET AL.  
ON ADMISSIBILITY OF HARASSMENT CONTENTION

Intervenors Bridget Little Rorem, et al., by their under-  
signed counsel, submit herewith their brief on the admissibility  
of their late-filed contention alleging harassment and intimidat-  
ion of, and undue production pressure on, quality control  
inspectors employed by the electrical contractor at Braidwood  
(hereafter "QC inspector harassment contention").

SUMMARY

As the NRC Staff has expressly recognized (NRC Staff's  
Response To The Commission Order of March 20, 1986, filed April 2,  
1986, pp. 16-18), Intervenors' harassment contention clearly  
satisfies the five-part test set forth in 10 CFR §2.714(a)(1) for  
submission of late-filed contentions.

Intervenors had good cause for late filing because they  
neither learned of, nor had reason to know of the serious harass-  
ment problems at Braidwood until May 17, 1985, and promptly filed

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their initial harassment contention one week later, on May 24, 1985. After diligent further investigation, Intervenors obtained additional detailed specifications of the harassment, which they filed with the Board on July 12 and 15, 1985. This information was so compelling and so recent that both Applicant and Staff implicitly recognized that the five-factor test was met, by stipulating to the admission of Intervenors' revised QC inspector harassment contention on July 23, 1985. \*/

Both initially - by bringing important information to the Board's attention and identifying (in July 1985) numerous fact witnesses - and subsequently by offering three expert witnesses on the likely effects of such harassment on QC inspectors' performance, Intervenors have shown their ability to contribute significantly to the record.

The facts that no other parties represent Intervenors' interest in this proceeding, and that no other means are available to protect Intervenors' interest, have already been

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\*/ In its Memorandum and Order of April 24, 1986, (pp. 11-12), the Commission ruled that the parties' stipulation did not relieve the Board from evaluating the contention under the five-factor test. As argued by Commissioner Asselstine in his dissent (pp. 2-3 and p. 2 n. 1), Intervenors believe that the Commission erred in so ruling. Nonetheless, this Board is of course required to abide by the Commission's ruling. But consistent with the Commission's ruling, even if the stipulation does not per se justify admission, it is persuasive evidence that in July 1985, all parties believed that Intervenors' QC inspector harassment contention satisfied the five-factor test. Until then, both Applicant and Staff had vigorously opposed admission of all portions of Intervenors' QA contention (including contention 2C). The July 23 stipulation thus represented a dramatic abandonment of their prior position that Intervenors' harassment contention was untimely.

conceded by both Applicant and Staff, and so recognized by the Commission. (Memorandum and Order, April 24, 1986, pp. 4, 7.) (Accordingly, these factors need not be, and are not further discussed in the succeeding sections of this brief.)

Finally, the admission of Intervenors' QC inspector harassment contention in July, 1985 has not led to any delay whatever in this proceeding. As the Board is aware, the hearing on emergency planning issues was not completed until March, 1986. If not for the delays due to Applicant's corrective action programs concerning other aspects of Intervenors' QA contention (subsequently dismissed by the Commission), the hearing on the harassment contention alone could have begun in October 1985 - the date Intervenors were prepared to meet - and could have been completed well before March, 1986. (While at present, additional time will be required for the hearing on harassment, this is only because the litigation of Intervenors' broader QA contention resulted in the scheduling of that hearing to begin in May, 1986.)

In sum, all five factors support the admission of Intervenors' QC inspector harassment contention, whether they are evaluated as of July 23, 1985, or as of today. \*/ The five-factor test thus weighs heavily in favor of admitting Intervenors' QC inspector harassment contention.

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\*/ As the Staff has recognized, even if the fifth factor (broadening and delay) were (incorrectly) to be counted against admission of the contention, it would be outweighed by the first four factors, and the contention should still be admitted. (NRC Staff's Response To The Commission's Order Of March 20, 1986, filed April 2, 1986, p. 17.)

Factors (1), (3) and (5) - good cause, contribution to the record, and delay - are further discussed in the sections which follow.

Factor 1: Good Cause.

The first public hint of any problem involving harassment of QC inspectors for the electrical contractor at Braidwood did not come until December 31, 1984, and even then hardly in a form to justify serious concern. In pertinent part, NRC Inspection Report 84-34/32 (Exhibit 16 to Intervenors' May 24, 1985 Motion To Admit Amended Quality Assurance Contention), p. 4, read in its entirety as follows:

- b. (Closed) Allegation (RIII-84-A-0119). On August 17, 1984, the allegor, an employee of the L.K. Comstock quality control department, stated that he was intimidated and harassed by L.K. Comstock quality control supervisory personnel. On September 21, 1984, the inspector met with the allegor 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. The inspector met with Commonwealth Edison Project management and Construction Superintendent to discuss the issue of intimidation and harassment. Subsequently, Commonwealth Edison management met with the L.K. Comstock Site Quality Control management to ensure that all parties understood that any form of intimidation or harassment would not be tolerated by Commonwealth Edison or the NRC. This allegation is considered closed.

Even though during the same time frame Mr. Worley Puckett, the electrical contractor's Level III inspector, had been fired,

and had filed and won his Department of Labor case for retaliatory discharge, these facts were not mentioned in the NRC inspection report.

On March 7, 1985, Intervenors filed their initial quality assurance contention concerning Braidwood. No harassment allegations were made, since Intervenors were not aware of any significant harassment problem. Later that same month, some twenty-four Comstock QC inspectors complained to the NRC about harassment, intimidation, and undue production pressure. (See the three NRC Staff memoranda attached to Intervenors' Supplement To July 12, 1985, Motions Regarding Harassment and Intimidation of Comstock Quality Control (QC) Inspectors, filed July 15, 1985.) Their allegations were so serious that the NRC Resident Inspectors at Braidwood initially concluded:

It appears at first glance with the information we have received that a shut down or some other aggressive action of the electrical work may be necessary to establish the quality of past work and the quality of the ongoing work. The lack of action by CECo QA in this area needs to be addressed along with CECo management's slowness or inability to take corrective action. The resident inspectors appraised CECo management last fall of the problems in L.K. Comstock Quality Control Department.

(Id., March 29, 1985, Memo, p. 7.)

Despite the obvious importance of the information in the three internal staff memoranda, and even though Intervenors' proposed quality assurance contention was pending before the Board, the Staff neither issued a public Inspection Report, nor filed any pertinent Board notification.

Not until May 17, 1985, did Intervenors first receive information that led us to suspect a possibly serious problem involving harassment of Comstock QC inspectors at Braidwood. On that date, Intervenors received a telephone call from an unidentified source who advised us that an L.K. Comstock employee named Mr. "Pluckett" had been fired, possibly the preceding year, and that he had taken his contentions to the national labor board and won his case. \*/

This information cast a new light on the Staff's casual treatment of the issue in its 84-34/32 Inspection Report. Intervenors began immediately to investigate the allegation by (1) searching the files at the U.S. Department of Labor, and (2) interrogating NRC Region III Staff official Mr. Warnick, at his May 20, 1985 deposition, about harassment at Braidwood. \*\*/

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\*/ This information was among that provided to the NRC in camera by Intervenors with their April 2, 1986, brief. It has since been provided, pursuant to the agreed protective order, to the attorneys for Applicant. In place of filing the in camera documents with this Board, Intervenors and Applicant have stipulated that Intervenors' counsel was informed as stated in the text above. Counsel for Intervenors have been advised by NRC Staff counsel that the Staff cannot join in the stipulation, insofar as Staff counsel has not seen the in camera documents, but that Staff has no information on the basis of which to question the information or to object to its representation in this brief.

\*\*/ The Commission has expressly rejected any suggestion that its "decision on the admissibility of [Intervenors'] contention may turn on the Licensing Board's legal error in authorizing the deposition of the staff witnesses at a time when no contention had been admitted. Any such concern is misplaced." (Memo and Order, April 24, 1986, p. 11 n. 1.) Thus, Intervenors' very limited reliance on the Warnick deposition, which the Commission has since found to have been improperly authorized, in no way detracts from the timeliness of Intervenors' harassment contention. (footnote continues on following page)

The first effort proved to be successful (although not in time for Intervenors' May 24 filing). By June, Intervenors' inquiries at the Department of Labor succeeded in locating and obtaining copies of that agency's file on the complaint filed by Mr. Worley O. Puckett (not "Pluckett" as the unidentified source had advised). Soon thereafter, Intervenors filed that information with the Board (together with other relevant information). (See Motion To Admit Claim Of Intimidation And Harassment Of Comstock Quality Control Inspectors And Motion For Protective Order, filed July 12, 1985, pp. 4-5 and Exhibits B-H.)

The second effort was less successful. At his deposition, Mr. Warnick was not very revealing. Acknowledging that the NRC staff had had discussions with "a lot of other Comstock employees," he contended that "they all expressed concerns, but nobody made allegations." (Id., p. 173.) Consistent with the version of events reported earlier in Inspection Report 84-34/32, he testified:

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(footnote continued from previous page)

Indeed, in its April 2, 1985 brief, the Staff took the position that information concerning harassment "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." (NRC Staff's Answer To The Commission's Order of March 20, 1986, filed April 2, 1986, pp. 16-17.) Thus, even though the Staff was unaware that Intervenors had first learned of harassment from another source on May 17, 1985, the Staff was correct in relying on the Warnick deposition, regardless of its legal status, as support for the timeliness of Intervenors' harassment contention.

As I reflect on this now, it seems like they didn't have technical concerns. As it says in the report, they were monetary and subjective opinions of poor management ...

(Tr., p. 177.)

Nonetheless, after Intervenors at the deposition requested "the NRC's file reflecting the investigation of these harassment-intimidation claims" (Tr. 180), the Staff did produce the August 17, 1984 letter in which Comstock QC inspector John Seeders complained of harassment and intimidation (e.g., "Again, I was harassed and intimidated into being done with my review on the given date no matter how I did it.") (Exhibit 15 to Intervenors' May 24, 1985 Motion To Admit Amended Quality Assurance Contention). This one letter was so revealing that it led the Board to conclude that it "does provide specific allegations of intimidation and harassment, contrary to the summary in NRC Inspection Report 50-456/84-34, at 4." (Memorandum and Order, June 21, 1985, p. 13.)

Still, Mr. Warnick did not identify, and the Staff did not disclose, the internal NRC staff memoranda revealing the far more serious and extensive allegations made by more than twenty-four Comstock QC inspectors in late March, 1985. Intervenors subsequently discovered these only by making independent inquiries of Comstock QC inspectors at Braidwood. These inquiries were exceedingly difficult, since the names and addresses of the inspectors were not public information, and because the inspectors were fearful and wary of discussing problems at Braidwood with outside lawyers, especially lawyers for



strangers involved in litigation against their employers. (See, e.g., Intervenors' Motion For Protective Order, filed July 12, 1985, pp. 1-3 and Exhibit A thereto.)

Despite the difficulty, Intervenors on July 14, 1985, succeeded in persuading one of the Comstock inspectors to turn over the three NRC staff memoranda, copies of which the NRC staff had provided to the complaining inspectors (but not to the public, Intervenors or the Board). No sooner were these documents filed and served, than Applicant and the NRC Staff quickly abandoned their prior opposition to Intervenors' harassment contention as untimely, and stipulated to the admission of the contention.

In short, Intervenors acted promptly and diligently upon the information they received concerning harassment and intimidation of Comstock QC inspectors at Braidwood. They filed both their initial contention (2C), and their subsequent, stipulated contention (the July 23 contention), within a reasonable time following receipt of the information on which each was based.

Moreover, Intervenors did so largely in spite of, not because of, information disclosed by the NRC Staff. Had the Staff been more forthcoming, the contention eventually stipulated to could have been filed in mid-April rather than in mid-July. In these circumstances, there can be no reasonable dispute that Intervenors had good cause for filing their harassment contention when they did.

Factor 3: Contribution To Record.

The threshold facts are that (1) the NRC staff's three internal memoranda of March and early April, 1985 demonstrate, at a minimum, serious questions concerning harassment, intimidation and undue production pressure on Comstock QC inspectors at Braidwood, and (2) absent Intervenors' independently obtaining these documents from a third party source, it is doubtful whether this undeniably important information would ever have been brought to the Board's attention.

Beyond this significant threshold contribution to the record, Intervenors identified by name, in their July 12 and July 15, 1985 harassment filings, numerous fact witnesses on the incidents and patterns of harassment discussed in the NRC Staff memoranda. Intervenors' July 12, 1985 filing also identified another key harassment witness, Mr. Worley Puckett, concerning a series of incidents not even mentioned in the Staff's memoranda.

Intervenors have independently interviewed many Comstock QC inspectors, including all those mentioned in the Staff's memoranda, and also participated in Applicant's depositions of several of them.

In addition, Intervenors have identified three eminently qualified expert witnesses whom they intend to call on the likely effects of such harassment on the quality of work of Comstock QC inspectors. The testimony of one, Dr. Daniel Ilgen, was prefiled on April 25, 1986; the particular subjects of the testimony of the other two, Drs. McKirnan and Arvey, were identified in the cover letter transmitting Dr. Ilgen's testimony. The resumes of

Drs. McKirnan and Arvey have previously been filed with the Board, and Intervenors plan to prefile their testimony on May 2, 1986.

The collective import of this expert testimony is as vital to the Board's licensing decision as is Intervenors' underlying factual evidence of harassment. Edison's principal defense appears to be that, whatever harassment may have occurred, it did not affect the quality of inspections. However, as shown by Intervenors' experts, the evidence on which Edison relies for that defense is simply not reliable. On the contrary, based on well-established principles of industrial and organizational psychology, it is likely that the extensive harassment, intimidation and undue production pressure on Comstock QC inspectors did affect the quality of their work. Absent further data on this question, the quality of electrical work at Braidwood must be regarded as indeterminate. Accordingly, pending further convincing data, the plant cannot be licensed.

On this record, it is not open to reasonable dispute that Intervenors have already made, and can be expected to continue to make, a significant contribution to the record. The third factor thus further weights the five-factor balance in favor of admission of Intervenors' QC inspector harassment contention.

Factor 5: Lroadening and Delay.

From the time Intervenors' harassment contention was filed, we have made clear that we were prepared to go to hearing on harassment by the then-scheduled hearing date of October, 1985. The three subsequent postponements of the hearing were each initiated by Applicant (on July 19, 1985, September 2, 1985 and January 9, 1986), cumulatively resulting in a hearing delay of 6-7 months, in order to complete Applicant's corrective action programs relating to other aspects (not harassment) of Intervenors' quality assurance contention. (See Brief of Intervenors On Admissibility Of Late-Filed Amended Quality Assurance Contention, filed April 2, 1986, pp. 35-36.) The only delay requested by Intervenors involved only one month, came after Applicant's three delays, and was necessitated by Applicant's lateness in completing those same corrective action programs, and Intervenors' consequent need to postpone completion of discovery. (Id., p. 36.) Thus it, too, was unrelated to Intervenors' harassment contention.

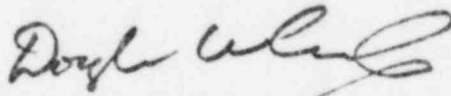
Nothing in the Commission's findings on delay in its April 24 ruling (pp. 8, 10) is inconsistent with the foregoing. The record thus indicates that hearings on the harassment contention could have begun at the same time as those on emergency planning, and could have been concluded sooner. The fifth factor thus reinforces the cumulative effect of the first four factors, and further favors admission of Intervenors' QC inspector harassment contention.

CONCLUSION

For the foregoing reasons, all five factors heavily favor the admission of Intervenors' QC inspector harassment contention. The Board should therefore reaffirm the admission of the contention.

DATE: April 30, 1986

Respectfully submitted,



Douglass W. Cassel, Jr.  
One of the Attorneys for  
Intervenors Bridget Little Rorem,  
et al.

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

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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of: )  
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COMMONWEALTH EDISON COMPANY ) Docket Nos. 50-456  
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CERTIFICATE OF SERVICE

I hereby certify that I have served copies of the Brief of Intervenor Rorem, Et Al., On Admissibility of Harassment Contention on each party to this proceeding as 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 North Dearborn, Chicago, Illinois 60602, on this 30th day of April, 1986; except that the Licensing Board was served via Rapid Fax Machine transmission (TELEX) for service by 8:00 A.M. on Thursday, May 1, 1986; NRC Staff Counsel Mr. Treby was served via Federal Express overnight delivery; and Edison counsel Mr. Miller was served by personal delivery.

Doyle W. Long

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.O. 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