

**BPI****Business and Professional People for the Public Interest**109 North Dearborn Street, Suite 1300 • Chicago, Illinois 60602 • Telephone (312) 41-5570
USNRC

April 8, 1986 APR 10 A8:46

BY MESSENGER

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

OFFICE OF
DOCKETING & SERVICE
BRANCH

Re: Commonwealth Edison Company (Braidwood
Nuclear Station, Units 1 and 2),
ALAB Docket Nos. 50-456/457 *OL*

Dear Mike:

Your letter of yesterday appears to reflect a misunderstanding. The documents we filed in camera with the Commission were not provided to you under the existing protective order, because that order is not applicable to those documents. Nor, given the nature of the information in the in camera documents, and the purpose for their filing, would a similar protective order suffice. However, as noted below, we are prepared to agree to a separate, different protective order with respect to the in camera documents.

Some chronology may help to clarify. Last August 2, you served an interrogatory asking us to describe every oral communication we have had concerning our contention. On August 16, we responded that we had communicated with various Comstock QC inspectors, and that they were the subject of our then-pending motion for a protective order.

Our answer continued as follows:

On May 17 and 24, 1985, counsel had oral communications with an unknown person who had knowledge of facts relevant to the amended QA contention. Intervenors object to describing such communication since a description may serve to

8604140296 860408
PDR ADDCK 05000456
G PDR

Directors

James W. Ashley
President
Charles M. Hill, Sr.
Vice President and
Treasurer
Richard P. Kiphart
E. Hoy McConnell II
Bettylu K. Saltzman
Vice Presidents
Sylvia R. Scheinfeld
Secretary

James M. Alter
Lucy B. Ascoli
Frederick W. Axley
Roland C. Baker
Francis Beidler III
Doris G. Bernstein
Julian L. Bernin
Henry C. Binford
Barbara T. Bowman
Douglass W. Cassel, Jr.
Marilyn D. Clancy
George Cohan
Donald R. Dann

Holly Davis
Susan E. Davis
Leon M. Despres
Luis E. Diaz Perez, M.D.
Carol Y. Farwell
Steve Fidler
Leon D. Finney
Herbert B. Fried
Bernard Gordon
Stephanie Wright Griggs
Ronald Grzywinski
Martin C. Hausman
Peter Hunt

Jack A. Jaffe
Joseph Kellman
Samuel I. Lawton, Jr.
Elliot Lehman
Robert B. Lofton
Michael D. Maltz
George R. McCoy
John L. McKnight
Byron S. Miller
Elena B. Mulcahy
Thomas L. Nicholson
Eugene Pekow
Alexander Polikoff

Marvin A. Ripsner, M.D.
Jeremy Warburg Russo
Alan Saks
Dianne L. Sautter
Bill Singer
Dawn DeVeese Smith
Cecil J. Troy
James O. Webb
Robert M. Weissbourd
Yale Wexler
Dora Williams

Staff

Alexander Polikoff
Executive Director
Douglass W. Cassel, Jr.
General Counsel
John R. Hammett
Mary Galloway James
Robert L. Jones, Jr.
Howard A. Learner
Timothy W. Wright III
Attorneys

Staff

Holly Gauthier
Director of Development
Jeanne L. Yudel
Administrative Assistant
Marissa A. Manos
Office Manager
Past Presidents
Gordon B. Sherman
Elliot Lehman
Robert B. Lofton

DO DS03

April 8, 1986

identify this person who clearly desired and sought anonymity. The nature of the communication persuades Intervenor's that the person has a legitimate interest in remaining anonymous.

In contrast to our position on the Comstock QC inspectors, we did not offer to disclose this information pursuant to a protective order. (It is this information, namely counsel's notes of the May 17 oral communication, and documents received from the source, which we filed in camera last week.)

Subsequently, on October 4, 1985, the Board granted our motion seeking confidential treatment "regarding prospective witnesses on Intervenor's Quality Assurance contention." (Memorandum, p. 1.) The Board noted that we sought "confidential treatment at this time for eleven present and former L.K. Comstock quality control inspectors and, as necessary, for other prospective witnesses to be identified by Intervenor's at a later date." (Id., p. 2.)

Accordingly, the Protective Order, entered on December 6, 1985, defined confidential information subject to its provisions as "the names and otherwise identifying information regarding certain prospective witnesses on Intervenor's Quality Assurance contention"

As the foregoing makes clear, the protective order relates only to information concerning "prospective witnesses." Even after it was entered, we continued to object to the disclosure of the contents of the May, 1985 communications to you, in part because we did not (and still do not) intend to call the source as a witness (especially since we do not know his identity).

Thus, on January 9, 1986, you again asked us to describe all oral communications relating to our contention. Even though we had previously disclosed the Comstock QC inspector names pursuant to the protective order, our January 23 response continued to object to describing the May, 1985 communications, based on the same grounds we had originally cited in August, 1985.

In sum, when we filed the in camera documents with the Commission, they were not covered by the protective order, and you had never moved to compel their production, even after being advised of our continuing objection to disclosing them.

Moreover, we did not offer them as evidence on our contention. Nor did we propose to call our source as a witness. Rather, as our Brief indicates, we filed them only to the extent

April 8, 1986

they might be deemed relevant to whether our contention met the five factor test for late filing.

While the existing protective order is not applicable, we are prepared to agree to an appropriate protective order concerning the in camera documents. However, such a protective order should be different from the existing protective order. That order was based on the particular facts concerning QC inspectors of a contractor (Comstock) at Braidwood, (see the Board's October 4, 1985 Memorandum, pp. 3-4, 5-7), who are prospective witnesses in the case. It thus permits disclosure not only to counsel, but to other persons whom counsel needs to consult for purposes of trial preparation. (Order, pp. 2-3.)

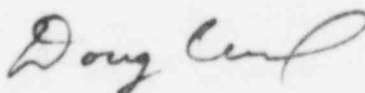
Such broader disclosure is both less needed and potentially more threatening to the in camera source, who does not appear to be a contractor employee and who is not a prospective witness. Indeed, it is difficult to perceive any legitimate need to disclose the in camera documents to persons other than the attorneys.

We are therefore prepared to agree to a protective order, the terms of which would be in substance as follows. Initially the in camera documents would be disclosed only to the attorneys for Applicant and to the attorneys for Staff. Further disclosure (if any) would be determined by the Commission (or by the Licensing Board, as appropriate), upon request by counsel, based on a sufficient showing of good cause for such further disclosure, and subject to appropriate safeguards.

As always, we would be happy to meet with you to discuss any suggestions or counter-proposals you may have in order to resolve the matter expeditiously by agreement.

At present, I see no need to comment on the rhetoric in your letter concerning the propriety of in camera submissions and the asserted waiver of work product privilege. In camera submissions are nothing new. We are confident that this is a matter which can and should be resolved with reasonable effort by both sides.

Sincerely,



Doug Cassel

cc: NRC Commissioners
Service List