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May 2, 1986

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD



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

NRC STAFF REQUEST FOR CLARIFICATION AND  
RECONSIDERATION OF MEMORANDUM (CONFIRMING  
ORDER ISSUED DURING CONFERENCE CALL OF 4/25/86)

I. INTRODUCTION

On April 29, 1986, the Licensing Board issued a Memorandum Order in which it confirmed certain rulings made during an April 25, 1986 telephone conference with the parties. Among the actions taken by the Board in that conference was the granting of a protective order entered into by Applicant and Intervenor "to protect the confidentiality of the source of certain information that had been supplied to Intervenor on the harassment and intimidation issue." Memorandum Order at 1-2. According to the Board's Order, the Staff was not made a party to the protective order (and thus not authorized by that order to obtain from Intervenor copies of the protected information) because, inter alia, "the NRC Staff was already cognizant of the substance of that information[.]" Id. at 2. The Board's order mischaracterizes the Staff's position in this regard.

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## II. DISCUSSION

While it is true that the Staff has been made aware of certain allegations of harassment and intimidation of L.K. Comstock quality control inspectors, see e.g., Inspection Report Nos. 50-456/84034; 50-457/84032, 50-456/85009; 50-457/85009; 50-456/85021; 50-457/85022, the Staff is not aware of anything which suggests that the information covered by the protective order is already known to the Staff. Obviously, the Staff has not had an opportunity to examine these materials covered by the protective order and thus is in no position to confirm the representation made in the April 25, 1986 telephone conference of Counsel for Intervenors that the protected materials do not contain any information not already known to the Staff. Thus, it is incorrect to state, as does the Board's Memorandum Order, that "the NRC Staff [is] already cognizant of the substance of the [protected] information." Id. at 2. The Staff requests the Board to clarify its Order to remove this misimpression.

The Staff also requests the Board to reconsider its ruling granting access to the protected information only to those parties entering into the protective order approved by the Board on April 25, 1986. The Staff declined to become a party to that protective order because the provisions of that order unduly limited disclosure of the protected information to Staff counsel. As was noted during the April 25, 1986 conference, the NRC Staff is different from the other parties in that it is charged by statute with the responsibility of investigating matters affecting public health and safety. Because the protected information may bear on the safety or health of the public, it is unreasonable to forbid Staff

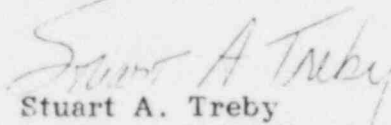
counsel from sharing that information with Staff members responsible for the matters to which it relates. This is particularly true in view of the fact that the Staff is already a party to a protective order issued in this case which limits disclosure of certain information received from intervenors to those Staff members with a "need to know." See Protective Order #4 (December 6, 1985). (copy attached). In the Staff's view, the December 6, 1985 protective order adequately protects intervenors' interest in preserving the confidentiality of its sources without unduly hampering the Staff's regulatory efforts. Further, the Staff does not believe the Board intended to rule that intervenors could not make available to the Staff any documents which have safety significance. In fact, the Commission encouraged intervenors to make such documents available to the Staff. Memorandum and Order, CLI-86-08, slip op. at 11, n.1 (April 24, 1986). For these reasons, the Board should order the disclosure of the materials in question to the Staff subject to the terms of the December 6, 1985 Protective Order.

### III. CONCLUSION

For the reasons stated herein, the Board should clarify its April 29, 1986 Memorandum Order denying the Staff access to the protected materials and direct intervenors to furnish those materials to the Staff subject to the terms of the December 6, 1985 Protective Order.

In addition, the Board should clarify the April 29, 1986 Memorandum Order to reflect that the Staff may not be cognizant of the substance of the protected materials.

Respectfully submitted,

A handwritten signature in cursive script, reading "Stuart A. Treby".

Stuart A. Treby  
Assistant Chief Hearing Counsel

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

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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

Herbert Grossman, Chairman  
Richard F. Cole  
A. Dixon Callihan

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In the Matter of

COMMONWEALTH EDISON COMPANY

(Braidwood Station,  
Unit Nos. 1 and 2)

Docket Nos. 50-456  
50-457

December 6, 1985

PROTECTIVE ORDER

In accordance with the Licensing Board's October 4, 1985, Memorandum and Order (Granting Protective Order), it is hereby ordered that confidential treatment will be afforded information to be disclosed by intervenors to Applicant and the NRC Staff in accordance with the following conditions:

1. Confidential treatment will be afforded by this protective order to "confidential information," meaning the

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names and otherwise identifying information regarding certain prospective witnesses on Intervenor's Quality Assurance contention (unless such information was obtained from a source other than Intervenor or their counsel). Such protection applies to the eleven present and former L. K. Comstock QC inspectors who sought such protection in Intervenor's Motion for Confidential Treatment of Eleven QC Inspector Names filed on August 2, 1984. and, as necessary, to their prospective witnesses to be identified by intervenors at a later date.

2. Such confidential information shall not be disclosed to any person except as permitted by the provisions of this order.
3. Persons who receive confidential information subject to this Protective Order shall use it solely for the purpose of preparing for and participating in this proceeding.
4. Confidential information shall be disclosed strictly on a "need to know" basis as required for participation by a party in the proceeding. Each person (except as exempted by this paragraph) to whom confidential

information is to be disclosed shall execute the Affidavit of Nondisclosure attached hereto acknowledging his or her obligation to be bound by this Protective Order. These Affidavits shall be filed with the Licensing Board and served on Intervenor by the party on whose behalf the disclosure is to be made. Members of the NRC Staff who are (1) assigned to the Office of Executive Legal Director (ELD), or (2) are non-ELD officials acting as reviewers when receiving the information and having no contact with Applicant's employees, need not file affidavits. They shall, nevertheless, be bound by the other terms of this Protective Order and are otherwise prohibited from making unauthorized disclosures of protected information under 10 C.F.R. Part 0, Subpart C and NRC Manual Appendix 2101.

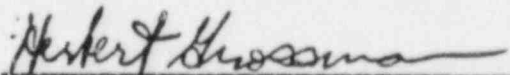
5. Prior to the disclosure of confidential information to any person (other than disclosure by NRC personnel to other NRC personnel necessary to the review or regulatory function), Applicant or the NRC Staff shall notify Intervenor's counsel of its intention to make such disclosure and of the identity of the person to whom such disclosure is to be made. Intervenor shall have the opportunity to object to such disclosure provided



such objection is made as quickly as possible, but in no event later than 48 hours after receipt of such notice.

6. Any person (even if not required to sign the affidavit) who has reason to believe that documents including confidential information have been lost or misplaced or any person who has reason to believe that the terms and conditions of this Protective Order have been violated shall notify the Board.

FOR THE ATOMIC SAFETY  
AND LICENSING BOARD

  
Herbert Grossman, Chairman  
ADMINISTRATIVE JUDGE

Dated this 6th day  
of December, 1985.



UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

Herbert Grossman, Chairman  
Richard F. Cole  
A. Dixon Callihan

In the Matter of

COMMONWEALTH EDISON COMPANY

(Braidwood Station,  
Unit Nos. 1 and 2)

Docket Nos. 50-456  
50-457

AFFIDAVIT OF NONDISCLOSURE

I, \_\_\_\_\_, being duly sworn,  
state that I have read and understand the attached Protec-  
tive Order entered by the Atomic Safety and Licensing Board  
in the above-captioned proceeding. I acknowledge receipt of  
a copy of that Protective Order, and I agree to be bound by  
all of the terms and conditions of the Protective Order.

I further understand that employees of Applicant and  
its contractors at the Braidwood Station are protected by

law from any and all discrimination in the terms and conditions of their employment because of their participation in this licensing proceeding. Such participation includes cooperation with Intervenor or the presentations of testimony as witnesses. The United States Department of Labor and the United States Nuclear Regulatory Commission are authorized to investigate alleged violations of this law. 42 U.S.C. § 5851. 10 C.F.R. § 50.7.

Signed and sworn to  
before me this \_\_\_\_\_  
day of \_\_\_\_\_,  
19\_\_.

\_\_\_\_\_

\_\_\_\_\_  
Notary Public

My commission expires \_\_\_\_\_.

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	
COMMONWEALTH EDISON COMPANY	)	Docket Nos. 50-456
	)	50-457
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CERTIFICATE OF SERVICE

I hereby certify that copies of NRC STAFF REQUEST FOR CLARIFICATION AND RECONSIDERATION OF MEMORANDUM (CONFIRMING ORDER ISSUED DURING CONFERENCE CALL OF 4/25/36)" 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 May, 1986:

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Washington, DC 20555

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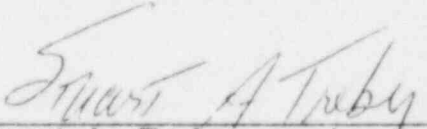
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