

UNITED STATES NUCLEAR REGULATORY COMMISSION

IN THE MATTER OF:
COMMONWEALTH EDISON COMPANY
(Braidwood Station, Units 1 & 2)

DOCKET NO: 50-456 OL
50-457 OL

LOCATION: JOLIET, ILLINOIS

PAGES: 5277 - 5289

DATE: MONDAY, JUNE 23, 1986

TR-01
0/1

ACE-FEDERAL REPORTERS, INC.

Official Reporters
444 North Capitol Street
Washington, D.C. 20001
(202) 347-3700

B606270239 B60623
PDR ADBCK 05000456
T PDR

NATIONWIDE COVERAGE

1 UNITED STATES OF AMERICA
2 NUCLEAR REGULATORY COMMISSION
3 BEFORE THE ATOMIC SAFETY AND LICENSING BOARD
4

5 -----x
6 In the Matter of: :
7 COMMONWEALTH EDISON COMPANY : Docket No. 50-456
8 (Braidwood Station, Units 1 : 50-457
9 and 2) :
10 -----x

11 Page: 5277 - 5289

12 College of St. Francis
13 500 North Wilcox
14 Joliet, Illinois

15 Monday, June 23, 1986

16 The hearing in the above-entitled matter convened
17 at 2:00 P. M.

18 BEFORE:

19 JUDGE HERBERT GROSSMAN, Chairman
20 Atomic Safety and Licensing Board
21 U. S. Nuclear Regulatory Commission
22 Washington, D. C.

23 JUDGE RICHARD F. COLE, Member,
24 Atomic Safety and Licensing Board
25 U. S. Nuclear Regulatory Commission
Washington, D. C.

JUDGE A. DIXON CALLIHAN, Member,
Atomic Safety and Licensing Board
U. S. Nuclear Regulatory Commission
Washington, D. C.

APPEARANCES:

Sonntag Reporting Service, Ltd.
Geneva, Illinois 60134
(312) 232-0262

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

On behalf of the Applicant:

JOSEPH GALLO, ESQ.
ELENA Z. KEZELIS
Isham, Lincoln & Beale
Three First National Plaza
Chicago, Illinois 60602

On behalf of the Nuclear Regulatory
Commission Staff:

ELAINE I. CHAN, ESQ.
GREGORY ALAN BERRY
U. S. Nuclear Regulatory Commission
7335 Old Georgetown Road
Bethesda, Maryland 20014

On behalf of the Intervenor:

DOUGLASS W. CASSEL, JR., ESQ.

1 JUDGE GROSSMAN: The hearing is reconvened.
2 This is the 26th day of hearing.

3 Our witness has not made his appearance yet, but we
4 have some preliminary matters.

5 Mr. Cassel, would you first indicate who you are?
6 I don't believe you've filed an appearance, have
7 you?

8 MR. CASSEL: Yes, I have filed an appearance
9 in the case, Judge.

10 JUDGE GROSSMAN: Oh, okay, fine.

11 MR. CASSEL: My name is Doug Cassel, and I'm
12 one of the counsel for Intervenors Rorem, et al.

13 We have a number of preliminary matters, which I
14 could proceed with, if you want to.

15 JUDGE GROSSMAN: Yes, why don't you.

16 MR. CASSEL: First, I would just like to note
17 for the record that we have, within the last
18 half-an-hour or so, served on the Board and on the Staff
19 and on Applicant a document dated today entitled,
20 "Motion to Admit Late-Filed Contention on Overstress of
21 Structural Columns."

22 A copy of that document will, of course, be
23 forwarded by Express Mail to docketing in Washington.

24 It was just prepared this morning, based on a
25 document which we received this morning.

1 I don't have anything further to say about it --

2 JUDGE GROSSMAN: Okay. That's fine.

3 MR. CASSEL: -- at this time.

4 JUDGE GROSSMAN: That's noted in the record.

5 MR. CASSEL: Second, Judge, as I believe the
6 Board is aware, throughout this litigation there has
7 been pending a discovery request for the Comstock
8 document on which it was allegedly memorialized that Mr.
9 DeWald had performed 1,000 or more inspections.

10 As I understand it -- and perhaps counsel for
11 Applicant will correct me if I misstate it
12 unintentionally -- we were told essentially that
13 Applicant was unable to ascertain that there ever was
14 any such document.

15 It's further my understanding now that last Friday
16 in this hearing Inspector Danny Holley testified that he
17 had seen the document, and that Inspectors Franco Rolan
18 and Michael Mustered testified in this hearing last
19 week, also, that its existence was a matter of common
20 knowledge among inspectors.

21 For that -- for those reasons, Judge, we would like
22 to renew our request that Applicant undertake to find
23 and produce the document to which Mr. Holley testified.

24 JUDGE GROSSMAN: Mr. Gallo?

25 MR. GALLO: Well, I have no objection to

1 covering that ground again just to be absolutely sure
2 that it -- it does or does not exist.

3 My recollection is Mr. Cassel's memory is correct,
4 that he was told that we could not uncover the document
5 that refers to the 1,000 welds.

6 My memory is also similar to his that Mr. Holley
7 did indicate that he had seen the checklist, I guess
8 Form 19, some time during his work experience at the
9 site.

10 JUDGE GROSSMAN: A number of times, I
11 believe, and my recollection is that that Form 19 was
12 not just in one place, but reproduced and in a number of
13 places, and anyone checking those welds in the different
14 areas would have come across that document.

15 So it certainly is worthwhile for another intensive
16 search to be made.

17 MR. GALLO: All right. And we will do that.

18 MR. CASSEL: In a similar vein, Judge, it's
19 my understanding that, with respect to the so-called
20 Pearl Harbor File which Mr. Saklak maintained, Mr.
21 Saklak apparently testified in his deposition that there
22 was, indeed, such a file, and he left it in his desk
23 drawer when he departed the site in the spring of 1985.

24 I believe that the discovery history on that file
25 is somewhat similar with respect to the 1,000 welds;

1 namely, that Applicant indicated that they had been
2 unable to locate any such file.

3 I'm further advised that Mr. Rolan, Inspector
4 Rolan, testified on the stand here last week that he had
5 seen the Pearl Harbor File, although he had not looked
6 inside it, and that Inspector Holley testified that he
7 knew about it.

8 Based on that testimony last week, Judge, we would,
9 again, renew our request that Applicant attempt to
10 locate the Pearl Harbor File and, if it cannot be
11 located, to attempt to determine whether it was
12 destroyed following Mr. Saklak's departure, and if so,
13 by whom and when and why.

14 JUDGE GROSSMAN: Mr. Gallo, I take it you
15 will agree to what's been requested of you?

16 MR. GALLO: Well, my recollection, Judge
17 Grossman, on this item was that one of the witnesses
18 presented by Applicant answered -- in answer to a
19 question, indicated that -- that he or somebody under
20 his supervision had cleaned out Saklak's desk and had
21 not found any such file.

22 But, yes, we will -- we'll just cover this ground
23 again and see what we can uncover on this point as well.

24 MR. CASSEL: I think that covers our
25 preliminary matters, Judge.

1 JUDGE GROSSMAN: Okay. Mr. Gallo, I believe
2 you had one.

3 MR. GALLO: Yes.

4 Judge Grossman, we are calling, by prearrangement,
5 Mr. Puckett tomorrow morning as an adverse witness; and
6 being aware of the Board's order with respect to
7 sequestration of witnesses, we wanted to make sure that
8 it was appropriate to allow Mr. Simile and Mr. Kurtz to
9 listen to Mr. Puckett's testimony.

10 Mr. Simile has already testified in this
11 proceeding.

12 Mr. Kurtz submitted direct testimony, but we have
13 withdrawn that direct testimony, and instead intend to
14 designate him as a potential rebuttal witness --
15 actually, more than potential, because the Board has
16 indicated there's a number -- there's a couple of areas
17 that they would like to hear from an AWS expert on, and
18 we have represented that Mr. Kurtz is that expert; but
19 we would intend that his primary purpose as a witness to
20 be to provide rebuttal testimony to the testimony of Mr.
21 Puckett.

22 For those reasons, we would like to have him in
23 the -- in the hearing room to the -- to listen to the
24 testimony; and for that matter, Mr. Simile might be
25 similarly used, depending on what we heard.

1 JUDGE GROSSMAN: Well, with regard to Mr.
2 Simile, there's no problem. I don't think that comes
3 within the Board's order.

4 As we indicated, once the witness has testified on
5 direct, he can then listen to further testimony and be
6 prepared for rebuttal.

7 With regard to Mr. Kurtz, we'll hear argument from
8 Mr. Cassel and Miss Chan or someone else on Staff.

9 Mr. Cassel.

10 MR. CASSEL: Judge, I frankly am not prepared
11 to address that, although I will, if you believe it's
12 necessary right now.

13 I'd like to do so at the end of the next break
14 after I consult Mr. Guild.

15 JUDGE GROSSMAN: Oh, okay.

16 I'm not sure that this has to be resolved -- oh,
17 well, it does, pretty much, by today or before Mr.
18 Puckett begins his testimony.

19 I would like to hear Mr. Guild on that; but that
20 will be impossible today.

21 What does the Staff have to say?

22 MR. BERRY: The Staff has no objection.

23 MR. CASSEL: Well, Mr. Guild is reachable by
24 telephone, and at the next break, I will reach him and
25 be prepared to say what he would have said.

1 JUDGE GROSSMAN: Yes, okay. That's fine.
2 So we'll defer hearing the remainder of the
3 arguments.

4 Is there anything else that we should hear in the
5 way of preliminary matters?

6 MR. BERRY: Staff has none.

7 JUDGE GROSSMAN: Okay. If that's the case,
8 and the witness still hasn't shown, we might just as
9 well go off the record now, and we'll wait a reasonable
10 time, and then we may have to conclude today's session
11 without having a witness called.

12 So we're off the record now.

13 (There followed a discussion outside the
14 record.)

15 JUDGE GROSSMAN: Why don't we go back on the
16 record.

17 The witness apparently is too far away to make it
18 here in any reasonable time, and rather than wait an
19 hour-and-a-half and put him on for maybe an hour, we'll
20 have him rescheduled.

21 So we might just as well then finish with the
22 question that was raised earlier with regard to Mr.
23 Kurtz, and we'll hear from Mr. Cassel on that.

24 Mr. Cassel.

25 MR. CASSEL: Judge, I represent that what I

1 am about to say is not the product of my independent
2 thinking and that I did reach Mr. Guild.

3 With respect to Mr. Simile, it's our understanding
4 that he's a prospective rebuttal witness, and our
5 understanding of the Board's order is that on that
6 basis, there is to be no problem with his hearing the
7 testimony; and we believe the case is similar with
8 respect to Mr. Kurtz, although we wanted to clarify Mr.
9 Kurtz' status.

10 I thought I heard Mr. Gallo indicate three things
11 concerning Mr. Kurtz' testimony. I may have misheard.

12 I thought I heard first that Mr. Kurtz' prefiled
13 testimony either has been or will be withdrawn; second,
14 that Mr. Kurtz will appear as a rebuttal witness to Mr.
15 Puckett; and thirdly -- and I'm not sure this is
16 different from the second -- that he is being presented
17 as an expert to respond to certain questions the Board
18 had concerning the AWS Code.

19 JUDGE GROSSMAN: I believe I heard all three
20 right now, and in the past, also.

21 Mr. Gallo?

22 MR. GALLO: That's an accurate
23 characterization.

24 JUDGE GROSSMAN: As to the extent there's any
25 uncertainty we have -- we hear by Mr. Kurtz' prefiled

1 testimony --

2 MR. CASSEL: To the extent Mr. Kurtz is a
3 rebuttal witness, we similarly have no objection to his
4 being present; but that, of course, implies that he
5 would be limited to -- in his testimony, to the scope of
6 whatever it was he was rebutting.

7 And as to the extent that the only other matter on
8 which he would testify would be responses to particular
9 issues raised by the Board concerning the AWS Code or
10 other matters on which the Board believes an expert is
11 required, we similarly would have no objection to his
12 being in the room.

13 But we just wanted to make sure we were not opening
14 the door to essentially having his prefiled testimony
15 refiled under another label.

16 JUDGE GROSSMAN: Well, I've been going
17 through his prefiled testimony, and I think a lot of
18 that could be characterized as responding to the AWS
19 questions.

20 So what I would suggest is that if Mr. Puckett is a
21 person who would be testifying with regard to these
22 matters, that he be prepared to testify on these
23 matters.

24 The, in fact, Intervenors are able to prepare him.
25 But let me just say that if Mr. Puckett is asked

1 questions on the areas that are contained in Mr. Kurtz'
2 withdrawn prefiled testimony, we would think that that
3 would be proper without having to lay any further
4 foundation as to -- in other words, if a suggestion is
5 made that -- let's assume that an argument is made
6 such, in this manner, "How would you respond to that,"
7 and the argument is set in the manner that is laid out
8 in Mr. Kurtz' prefiled testimony, I would think that the
9 question would be appropriate.

10 I don't know if I'm getting it out right; but is
11 that understood?

12 Does Mr. Gallo have any objection to that?

13 MR. GALLO: We do not, your Honor.

14 Indeed, I think it will be fair to say that Mr.
15 Miller's -- some of Mr. Miller's questions will touch on
16 those very areas that are covered in his testimony now
17 withdrawn.

18 MR. CASSEL: Again, to the extent that -- and
19 I personally have not read Mr. Kurtz' testimony.

20 To the extent that there is nothing in it that does
21 not fall either directly within the Board's concern on
22 expertise or which turns out to be proper rebuttal of
23 something Mr. Puckett says, then the two categories, in
24 effect, really expand to cover the whole turf.

25 But we did not want to indicate it's our

1 understanding that those two categories are what is
2 involved here and are --

3 JUDGE GROSSMAN: And that these two
4 categories are exclusive in that Mr. Gallo is forewarned
5 that if any other category comes in or attempts to come
6 in, that we may not allow it, and I guess you've taken
7 that warning, Mr. Gallo; but it's up to Mr. Miller, I
8 would assume.

9 MR. GALLO: I understand the Board's
10 position.

11 JUDGE GROSSMAN: Okay. And Mr. Miller does,
12 too.

13 I believe he's -- I don't know, but if he's the one
14 who prepared Mr. Kurtz, then he's the one who's most
15 interested in that discussion.

16 Mr. Berry.

17 MR. BERRY: That's acceptable to the Staff.

18 JUDGE GROSSMAN: Okay. With that business
19 being concluded, I guess we'll adjourn now until
20 tomorrow at 9:00 o'clock.

21 (WHEREUPON, the hearing of the
22 above-entitled matter was continued to
23 the 24th day of June, 1986, at the hour
24 of 9:00 A. M.)

CERTIFICATE OF OFFICIAL REPORTER

This is to certify that the attached proceedings before the UNITED STATES NUCLEAR REGULATORY COMMISSION in the matter of:

NAME OF PROCEEDING: COMMONWEALTH EDISON COMPANY
(Braidwood Station, Units 1 & 2)

DOCKET NO.: 50-456 OL; 50-457 OL

PLACE: JOLIET, ILLINOIS

DATE: MONDAY, JUNE 23, 1986

were held as herein appears, and that this is the original transcript thereof for the file of the United States Nuclear Regulatory Commission.

(sig) Gary L. Sonntag
(TYPED) Gary L. Sonntag

Official Reporter

Reporter's Affiliation