



SECRETARY

UNITED STATES  
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

August 26, 1998

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MEMORANDUM TO: B. Paul Cotter, Jr.  
Chief Administrative Judge  
Atomic Safety and Licensing Board Panel

OFFICE OF THE SECRETARY  
NUCLEAR REGULATORY COMMISSION  
ADJUDICATION DIVISION

FROM: *John C. Hoyle*  
John C. Hoyle, Secretary

SUBJECT: PETITION FOR LEAVE TO INTERVENE SUBMITTED  
BY THE COMMITTEE FOR SAFETY AT PLANT ZION,  
RANDY ROBARGE AND EDWIN D. DIENETHAL

Attached is a petition to intervene dated August 18, 1998, and submitted by the Committee for Safety at Plant Zion, Randy Robarge and Edwin D. Dienethal. The petition was filed in response to a notice of issuance of an amendment to the Commonwealth Edison Company for the Zion Nuclear Power Station (Docket Nos. 50-295/304), published in the Federal Register at 63 Fed. Reg. 43216, 43217 (August 12, 1998) (copy attached).

The petition to intervene is being referred to you for appropriate action in accordance with 10 C.F.R. Sec. 2.772(j).

Attachments: As stated

cc: w/o Exhibits

Commission Legal Assistants

OGC

CAA

OPA

EDO

NRR

David W. Jenkins, Esquire

Robert E. Helfrich, Esquire

Commonwealth Edison Company

Stephen M. Kohn, Esquire

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intervene.

Additionally the August 12<sup>th</sup> Federal Register notice also stated that contentions could be filed within 15 days prior to the first prehearing conference scheduled in this matter. The Petitioners hereby are filing a set of contentions. However, the Petitioners reserve the right to amend this list of contentions and/or amend other parts of this filing within 15 days of the first prehearing conference.

Moreover, for the reasons set forth in this filing, the Petitioners' are requesting a stay concerning the implementation of the Finding.

### **INTRODUCTION**

The Committee for Safety at Plant Zion (CSPZ), Mr. Randy Robarge and Mr. Edwin D. Dienethal hereby file this petition for leave to intervene in matter referenced in Vol. 63 Federal Register No. 155, pp. 43200-20 regarding Plant Zion. This petition includes, but is not limited to, a request for leave to intervene in the July 24, 1998 "No Significant Hazards Consideration" finding reached by the NRC Staff. Id., p. 43217. The CSPZ is a committee dedicated to ensuring that the operation and decommissioning of Plant Zion do not threaten the health and safety of the public. Mr. Robarge and Mr. Dienethal serve as the co-directors of the CSPZ. Both Mr. Robarge and Mr. Dienethal reside within ten miles of Plant Zion. Both worked at the plant as supervisors. Based upon their knowledge of actual plant operations, their ability to obtain information (and expert opinions) from current and former plant employees, and their direct personal interest in the safe operations of Plant Zion, CSPZ, Mr. Robarge and Mr. Dienethal are uniquely situated to positively contribute to the licensing proceeding.

As is set forth in the proposed contentions, the proposed amendments pose significant hazards to the public health and safety. The proposed amendments will:

- involve a significant increase in the probability or consequences of an accident previously evaluated;
- create the possibility of a new or different kind of accident from any accident previously evaluated; and
- involves a significant reduction in the margin of safety.

10 C.F.R. § 50.92.

This petition concerns the failure of Applicant to properly manage Plant Zion. As a result of these failures, Plant Zion has been shut down many years ahead of schedule. This premature shut down will cost the tax payers hundreds of millions of dollars, it will directly or indirectly negatively impact on the tax base for the City of Zion and the surrounding communities, and it has already cost hundreds of employees their jobs, forcing residents to relocate, enter early retirement, become unemployed, or otherwise suffer financially due to the misconduct and mismanagement of Applicant. Worse, the failure of Applicant to adhere to the requirements of its operating licenses and safety regulations resulted in significant and material threats to the public health and safety, the local environment and the health of plant workers, all of which contributed to the need to close down Plant Zion.

These mistakes and misconduct, which have resulted in this terrible state of affairs for the employees, former employees, and persons who reside around Plant Zion, cannot be repeated as the plant prepares for the “decommissioning” phase. The hazards to the public health and safety posed by the continued presence of radioactive material at the Zion site, and the work which

must be performed to decommission the plant, are as severe, and in many cases more severe, than those that existed during the full operational phase of the plant. However, because Applicant is not earning a profit from Zion, its incentive to properly manage the plant and pay the costs necessary to fully protect the persons and property interests of the local community is diminutive. As will be set forth below, even now, as the first steps of the decommissioning process begin, Applicant is seeking to cut costs which will undermine the public health and safety.

Whether or not Plant Zion operates at a profit or a loss, and whether or not the safe decommissioning and continued maintenance of the plant costs Applicant resources, should be of no concern to the public or the Nuclear Regulatory Commission (NRC). In fact, the public and the NRC must fully recognize how the lack of a profit incentive will negatively impact on Applicant's shutdown and decommissioning process. Significantly, even when Applicant had a profit incentive in the past to properly manage and operate Plant Zion, it utterly failed to exercise the professionalism necessary to run the plant.

Although Plant Zion has not produced electricity for a considerable period of time and Commonwealth Edison has announced its intention to decommission the plant, the Applicants has not submitted a decommissioning plan to the NRC. Accordingly, Plant Zion is still considered an operational nuclear plant and must be held to comply with nuclear safety regulations and standards applicable to operational plants until it submits and receives approval of a decommissioned plant. However, Commonwealth Edison seeks through the proposed amendments to circumvent normal nuclear safety regulation standards.

## STANDING

To comply with basic standing requirements, the petitioners need to prove three elements of standing. First, that the petitioners have or will suffer a distinct and palpable injury in fact within the zone of interest. Second, that the injury is or can be *fairly* traceable to the challenged action. And third, that the injury is *likely* to be remedied by a favorable decision in the pending case. Yankee Atomic Electric Co., 43 NRC 61, 68 (1996).

The possibility of health and safety or environmental injuries is palpable to substantiate injury in fact as long as “some, even minor, public exposures can be anticipated . . .” Id., 43 NRC at 70. The petitioners need only prove a reasonable possibility of a future injury-in-fact arising out of either residency or recreational activity in proximity to the facility, or by travel of common “waste transportation routes.” Id.

It has been long held that petitioners who reside within a 50 mile radius of the facility have sufficient standing to intervene.<sup>1</sup> Residing within this distance alone places petitioners within the “zone of harm,” exposing them to concrete possibilities of injury-in-fact caused by the facility. Although a 50-mile presumption does not apply in all license amendment proceedings, the Commission has held it is sufficient to confer standing where a significant amendment is involved and there is an “obvious potential for offsite consequences.” Florida Power & Light Co., 30 NRC 325, 329-330 (1989). The facts of each case may be taken into account when

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<sup>1</sup> See Georgia Power Co., 32 NRC 89, 92 (1990); Virginia Electric and Power Co., 9 NRC 54, 56 (1979); Houston Lighting and Power Co., 9 NRC 439, 443-44 (1979); Tennessee Valley Authority, 5 NRC 1418, 1421 n.4 (1977).

determining what distance is relevant. “Whether and at what distance a petitioner can be presumed to be affected must be judged on a case-by-case basis, taking into account the nature of the proposed action and significance of the radioactive source.” Georgia Institute of Technology, 42 NRC 111, 116 (1995).

Unquestionably, persons who reside or recreate within the “general vicinity of the plant” qualify as injury in fact victims within the zone of interest.<sup>2</sup> For example, a commuter who drives by the facility on a regular basis qualifies within the “zone of harm” of possible injury-in-fact. Georgia Institute of Technology, 42 NRC at 117. Additionally, a person who lives 7 days per month in a house located 35 miles from a nuclear power plant would have standing to intervene in a license amendment case. Georgia Power Co., et al., 37 NRC 96, 106-107 (1993). Moreover, a person who lives 45 miles from a nuclear plant and canoes in the general vicinity of the plant has been found to suffer “injury in fact” from a proposed license amendment to permit expansion of the capacity of the spent fuel pool. Virginia Electric and Power Co., 9 NRC at 57.

In this case, Petitioners Robarge and Dienethal resides within 10 miles of Plant Zion, well within the standard distance accepted for intervention. See Affidavit of Robarge, ¶ 2; Affidavit of Edwin D. Dienethal, ¶2. In addition, Mr. Robarge has significant contact with Plant Zion and the Zion community such that his intervention in this proceeding would serve the public interest. Exhibit 11, Tr. 470-508.

Petitioners Robarge and Dienethal and, and their families reside, recreate, work, and

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<sup>2</sup>See Virginia Electric and Power Co., 9 NRC at 56 (holding that only the “existence of a *reasonable possibility* that expansion of the spent fuel pool capacity might have an adverse impact upon persons living nearby” is needed to prove standing) (Emphasis added.).

perform virtually all of their everyday activities well within Plant Zion's "zone of harm."

Besides residing only ten miles from the facility, the Petitioner and his family boat, fish, swim, and play water sports in Lake Michigan, where Plant Zion discharges effluents and waste, see Affidavit of Edwin D. Dienethal, ¶6; the family frequents a bike trail that spans across Zion, Illinois, and passes directly in front of Plant Zion, id., ¶7; Dienethal also golfs, and frequents a state public park in the town of Zion, Illinois, id.; and Dienethal's children, ages nine and six, play soccer just nine miles from the Plant once a week for six months out of the year. Id., ¶5. Dienethal and his wife attend every soccer game each week. Id.

Petitioner Dienethal's children's school is only twelve miles from the plant. See Affidavit of Edwin D. Dienethal, ¶5. Additionally, the Petitioner Dienethal and his wife must travel within one mile of Plant Zion to visit the post office, shop, attend movies, or purchase gasoline, actions done at least three to four times a week. Id., ¶9. The water and food Dienethal and his family consume are also effected by Plant Zion. Food is purchased from local farms within 10 miles of Plant Zion, and water supplied by Lake Michigan where Plant Zion dumps waste. Id., ¶10. All of these interactions within the general vicinity of Plant Zion place Dienethal and his family well within the plant's "zone of harm."

Activity near the facility places Petitioners in distinct and palpable risk of serious injury in fact, directly traceable to Plant Zion. Injury in fact need not exist already. The definition includes those who "have been injured in fact because of the possibility of an accident. . . . So: injury in fact is indeed the same, in this context, as an allegation that a real injury might reasonably be expected to occur in the future." Georgia Power Co., 37 NRC 96, 106 n.30 (1993).



The No Significant Hazards Determination concerning Plant Zion poses a concrete and serious risk of future negative health effects on Petitioners, their families and the community in which they live, eat drink water, breath air and own land. See, List of Contentions set forth below. Also see Affidavit of Robarge; Affidavit of Edwin D. Dienethal, ¶¶10, 18, 19, 20, 21. Petitioners allege that if Plant Zion functions under the proposed amendments, the risk of potential injuries to himself, his family, Plant Zion workers, the community, and the local environment will be increased as a result of inter alia: “1. LOCA (Lost of Coolant Accident), 2. radiological concerns, 3. unsafe levels of radiation for the employees at the plant and the general public, 4. undetectable radiation contamination by employees, 5. contamination of the local community and the environment, 6. increase risk of accident at Plant Zion, and 7. contamination of Lake Michigan.” Id., ¶ 20. Petitioners also allege that if Commonwealth Edison Co.'s request for amendment is approved other imminent risks would result due to the increased potential of failing to detect radiation in adequate time and the increase risk of the plant functioning unsafely and outside NRC regulations. Id. Additionally, if the request for amendment is approved the facility poses a serious negative impact on Petitioners’ property values, as well as the property value of his surrounding community overall. These allegations are more than sufficient to satisfy the injury in fact and other standing requirements necessary to grant Petitioners leave to intervene.

In addition, it has been held that petitioners who regularly use the roads that may be employed by trucks carrying waste away from a nuclear power plant may be sufficient to confer standing to intervene. Yankee Atomic Electric Co., 43 NRC at 68-69. Petitioner Dienethal’s daily business activities and work commute brings him directly past or very near Plant Zion three

to four times a week. See Affidavit of Edwin D. Dienethal, ¶8. An essential business supplier, whom Dienethal must visit on a regular basis to maintain his business, is located just one mile from the facility. Id. Many of the roads Petitioner Dienethal travels for business are the same roads which Plant Zion uses to transport radioactive waste from the plant. Id. Accordingly, Petitioner's use of the very roads used by Plant Zion to transport radioactive waste is sufficient to meet the injury in fact test and to confer standing to intervene in this proceeding.

In a license amendment case involving allegations of the unfitness or lack of character and competence of management there is an obvious potential for offsite consequences, so standing is analogous to that in an operating license case. Georgia Power Co., 37 NRC at 108. In this case, Petitioners have set forth contentions that raise allegations that Commonwealth Edison Company management officials have intentionally violated nuclear safety regulations and operated Plant Zion in a deliberately non-safety-conscious manner and that a complete quality assurance breakdown exists at the plant. Moreover, Petitioners allege that if Commonwealth Edison Co.'s request for amendment is approved then these already unsafe conditions at Plant Zion will worsen. Accordingly, Petitioners have more than satisfied the standing requirements because they would be injured if Plant Zion's amendment request were granted due to the lack of character and competence of the plant's management.

Petitioners Robarge and Dienethal have formed the CSPZ. They serve as co-directors of this organization. This petition to intervene is also filed on behalf of the CSPZ, through the personal standing of its co-directors. In accordance with Georgia Institute of Technology, LBP-95-6, 41 NRC 281 (1995) and Duke Power Co., ALAB-528, 9 NRC 146, 151 (1979), all of the Petitioners request that CSPZ be granted intervenor status. Both Mr. Robarge and Mr. Dienethal

grant CSPZ permission to represent their personal interests in this matter. However, should CSPZ not be granted intervenor status, Mr. Robarge and Mr. Dienethal request that they be granted intervenor status as a result of their personal standing in this matter.

Petitioners satisfy all of the essential elements of standing. They have alleged that their health, safety, property rights and personal finances could be adversely affected by an order granting Commonwealth Edison Co.'s request for licensing amendment and/or through the No Significant Hazards Determination. There is a reasonable possibility of future injury in fact to Petitioners health and property value, and this threat of harm to Robarge and Dienethal, their families, and their communities, is directly caused by the proposed license changes to Plant Zion. Petitioners, therefore, should be granted permission to intervene in all proceedings directly or indirectly related to the matter published in the Federal Register on August 12, 1998 (Vol. 63, No. 155, pp. 43200-43220), including, but not limited to, the No Significant Hazards findings related to Plant Zion.

### **PETITIONERS' CONTENTIONS**

Petitioners must proffer at least one acceptable contention to be admitted as a party to this proceeding. Georgia Power Co., 32 NRC 89, 91 (1990). A contention need not appear in the intervention petition itself but, rather, can be set forth in a supplement to the intervention petition filed not later than 15 days prior to the first prehearing conference. Id.

A contention is admissible if the requirements of § 2.714(b)(2) are met, which provides:

(2) Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide the following information with respect to each contention:

- (I) A brief explanation of the bases of the contentions
- (ii) A concise statement of the alleged facts or expert opinion which

- support the contention and on which the petitioner intends to rely in proving the contention at the hearing, together with references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion.
- (iii) Sufficient information (which may include information pursuant to paragraphs (b)(2)(I) and (ii) of this section) to show that a genuine dispute exists with the applicant on a material issue of law or fact. This showing must include references to the specific portions of the application (including the applicant's environmental report and safety report) that the petitioner disputes and the supporting reasons for each dispute, or, if the petitioner believes that the application fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the petitioner's belief.

10 C.F.R. § 2.714(3)(b)(2).

The contention regulations "require a clear statement as to the basis for the contentions" and "reference to specific documents and sources that establish the validity of the contention." Arizona Public Service Company, 34 NRC 149, 155-156 (1991) (See 54 Fed. Reg. 33, 168, 33, 170 (1989)). However, the intervenor need not prove its case at the contention stage or present factual support in affidavit or evidentiary form sufficient to withstand a summary disposition motion. Nonetheless, the petitioner must make a minimal showing that material facts are in dispute such that a further inquiry is appropriate. Yankee Atomic Electric Company, 43 NRC at 63, (citing Georgia Institute of Technology, 42 NRC at 117-118).

As set forth below, the Petitioners have established valid contentions. Each of these contentions demonstrate why the NRC Staff should not have issued and why the NRC should not issue a "no significant hazards" determination. Each contention also demonstrates why a stay should be granted preventing the implementation of any of the proposed amendments to the

Applicant's license.

## CONTENTION 1

Statement Required under 10 C.F.R. § 2.714(b)(2): All of the requested amendments to the licence must be denied due to the Quality Assurance (QA)/problem identification breakdown which currently exists at Plant Zion and which has existed at Plant Zion for a considerable period of time. See, John C. Brons to NRC (March 30, 1998) (hereinafter, "Applicant's Application"), Attachment A.

Brief Explanation of Basis for Contention Required under 10 C.F.R. § 2.714(b)(2)(I) and the Concise Statement of Facts, Opinion, and References which Support Contention Required under 10 C.F.R. § 2.714(b)(2)(ii): Applicant's proposed amendments impact on core safety processes and procedures at Plant Zion and individually and collectively cannot be approved due to a breakdown of Plant Zion's QA program, problem identification program, and other reporting or quality assurance processes necessary for the safe operation for decommissioning of Plant Zion. Applicant's proposed amendments would result in the removal of key safety related personnel, such as the cite vice president, senior reactor operator licensed personnel, and the elimination of full-time radiation protection personnel on site. In addition, it would alter the staffing requirements for the control room and the training requirements of all onsite employees. Finally, the proposed amendments would alter all of the technical specifications which govern on site safety related work. Given the sweeping nature of the proposed amendments, the quality assurance/problem identification breakdown at Plant Zion mandates that no such amendments be approved.

The public record demonstrates that Plant Zion's QA/problem identification program has

failed. See Exhibit 3, “Notice of Violation (NOV) and Enforcement Action (EA) Resulting from Quality Assurance Breakdown”; Exhibit 4, “Notice of Violation (NOV) and Enforcement Action (EA) Resulting from Failure to Follow Procedures. Due to this breakdown, Applicant cannot insure that any of the amendment changes requested in the license shall be administered in a manner consistent with the controlling procedures, regulations, laws, and/or the requirements of public safety. The Petitioner can support this contention with a significant amount of evidence.

First, Mr. Allen Mosbaugh will be an expert witness for the Petitioner. He was qualified as an expert on quality assurance matters during the Department of Labor (DOL) proceeding in Robarge v. Commonwealth Edison, 98-ERA-2. <sup>3</sup>During his testimony in that proceeding Mr. Mosbaugh reviewed evidence related to the quality assurance and problem identification program at Plant Zion and testified that the evidence supported a finding of a QA breakdown. The transcript of Mr. Mosbaugh’s testimony shall be introduced in this proceeding. See Affidavit of Randy Robarge.

Second, both the Petitioner, Mr. Robarge, and numerous other employees or former

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<sup>3</sup> The Randy Robarge Department of Labor record is publically available from the US Department of Labor, Office of Administrative Law Judges. The entire public record of that proceeding is incorporated into all of the contentions by reference. Certain depositions were conducted in that proceeding which were not made part of the public record. Where relevant, excerpts from these depositions will be attached. In regard to the specific testimony given by Allen Mosbaugh in the proceeding, he was questioned under oath extensively by counsel for Mr. Robarge and counsel for the Applicant. This testimony, in its entirety, should be reviewed carefully by this board as further evidence of the QA breakdown. Mr. Mosbaugh was qualified as an expert in the Robarge proceeding, and the petitioner in this case intends to use Mr. Mosbaugh as an expert in this proceeding on both QA and character incompetence issues, and on other relevant technical issues. As can be seen by Mr. Mosbaugh’s testimony in the Robarge case, Mr. Mosbaugh possess expertise in a wide range of nuclear safety matters. Exhibit 10, Testimony of Allen Mosbaugh.

employees of the Applicant shall testify to the existence of “PIF wars” at Plant Zion. PIFs are “Problem Identification Forms” for which employees at Zion were required to properly file. PIFs constituted one of the most important, if not the most important, method for employees to identify safety problems onsite and for Applicant’s management to correct and trend safety problems onsite. The NRC Staff has fined Applicant for its failure to properly file PIFs, and in the Robarge DOL case numerous witnesses testified that the program had broken down. Plant Zion managers knew that employees were failing to file PIFs, managers were conducting illegal field modifications concerning the PIF requirements, employees were harassed merely for filing PIFs, and PIFs were routinely not filed in violation of procedure. See Robarge, 98-ERA-2.

The “PIF war” concept was very simple. As testified to by numerous witnesses during the Robarge DOL proceeding, if an employee or a department filed a PIF identifying problems with another employee or department’s work, the target of the original PIF would retaliate and file PIFs against the original allegor. This could escalate into a full scale “war” between departments or between people. “[I]f somebody PIF’s our department, we PIF them back. If we PIF somebody else, they PIF us back to defend” See Exhibit 5, redacted excerpts from the Deposition of Rodney Bauman, Tr. 16. See also Exhibit 6, redacted excerpts from the Deposition of Brent Robinson, Tr. 77-78; Exhibit 7, redacted excerpts from the Deposition of Ronald Schuster, Tr. 17-19; Exhibit 8, redacted excerpts from the Deposition of John C. Meyers, Tr. 68-69. Consequently, most employees would just not file PIFs. See testimony from Robarge and Satterfield placed on the official transcript of the Robarge DOL hearing. Also see, e.g. DOL testimony of Russell Satterfield given in the Robarge matter. Ex. 9, Tr. 432-35. This decision not to file PIFs led to a complete breakdown of Applicant’s QA program and its ability to

determine the true condition of its plant. Without the proper filing of PIFs, Applicant was unable to identify or trend problems, or to conduct proper root cause reviews, among numerous other problems.

Allen Mosbaugh, an unquestioned expert in quality assurance and problem identification, testified about PIF wars. Exhibit 10. Mr. Mosbaugh, in his testimony, stated as follows: “If something like a PIF war as I understand it was going down going on I would consider that virtually a complete breakdown of the PIF program and the quality assurance program that it implements. The concept as I understand is that people would retaliate against each other by writing PIFs. Has no place in the nuclear industry. The management should be by problem address the problems that are known. There is to be no element of retaliation. It’s totally unprofessional and its a breakdown of the system.” Exhibit 10 Tr. 981-82.

Applicant’s highest levels of management were fully aware of the “PIF war” problem and failed to take reasonable steps to correct the problem. In fact, the NRC Staff found that managers themselves were failing to file PIFs. See Robarge, 98-ERA-2.

In addition to the PIF wars, Applicant’s supervisors and employees committed knowing and willful violations of mandatory safety procedures. See Robarge, 98-ERA-2. Applicant had full knowledge of these willful violations and failed to take any action to identify, correct, or punish those persons who committed wilful violations. In testimony obtained in December 1997 from depositions conducted in Robarge, supervisors of the Applicant admitted, under oath, to knowing that intentional violations of procedures occurred onsite and that the existence of these intentional violations were well known. Mr. Ron Schuster, a long-term supervisor-employee of the Applicant, testified under oath that he “physically witnessed” a supervisor “operating outside



of the bounds.” Ex. 7, Tr. 24. Mr. Schuster also confirmed that other supervisors were fully aware of these wilful violations and that the supervisor in question had a “reputation among the supervisors” as “someone who did not strictly adhere to procedures.” Ex. 7, Tr. 24-25. Mr. Schuster’s allegations were confirmed by three other management level employees of the Applicant during the deposition process in the Robarge case. See, Ex. 5, Tr. 29-30 (Bauman); Ex. 6, Tr. 17-18 (Robinson); Ex. 8, Tr. 24 (Meyers). Official representatives of the Applicant (i.e. their counsel) participated in these depositions and learned of this wilful misconduct. Consistent with the past practice onsite, however, no investigation or action was taken after these depositions were taken to verify, punish, and correct the willful misconduct.

At the hearing conducted in the Robarge DOL case, numerous other witnesses testified, under oath, that they knew that willful violations had been committed by more than one supervisor and that it was common knowledge on site (including site management) that such wilful violations were occurring. See Robarge, 98-ERA-2. Also see, Exhibit 9, excerpts from the Robarge hearing testimony. For example, Mr. Gerald Ruffolo testified, under oath, to personally witnessing three separate supervisors give instructions that safety-related procedures be intentionally violated. Ex. 9, Tr. 219-232. Some of these witnesses testified to personally being instructed to wilfully violate procedures. Id. Moreover, witnesses confirmed that the reputation of some of the persons who wilfully violated procedures were well known throughout the plant and through every level of management. Id.

Additionally, Applicant has engaged in the harassment and intimidation of whistleblowers at Plant Zion. The NRC Staff has issued a Notice of Violation due to a contractors harassment of a whistleblower and a number of employee’s for the Applicant have

alleged harassment, wrongful discharge and intimidation. In a July 22, 1997 letter to Thomas Maiman, Applicant's Senior Vice President for Nuclear Operations from A. Bill Beach, NRC Regional Administrator, the NRC Staff warned Applicant about the "chilling effect" harassment and intimidation may be having on employee whistleblowing at the Plant Zion site. All twenty seven allegations of discrimination referenced in this letter indicate a QA breakdown. It is reasonable to assume that the NRC Staff is currently aware of other allegations of harassment and intimidation which were filed after the July 22<sup>nd</sup> letter was issued. Again, the "chilling effect" caused by the improper harassment of employees indicates a QA breakdown at Plant Zion. Evidence of harassment and intimidation was also introduced during the Robarge DOL claim and, upon information and belief, other employee's have filed discrimination claims under Section 211 of the Energy Reorganization Act which are currently under investigation by OSHA.

Procedures onsite were regularly violated. For example, at the hearing in Robarge, testimony was given that Radiation Work Permits (hereinafter "RWP") often were approved, even though they approved work was outside of the scope of the procedures. See Robarge, 98-ERA-2 (testimony by Ruffello). The NRC Staff was never informed about the result of an audit of these violations, despite the fact that numerous supervisors and managers knew of the apparent violations. The NRC has issued a Notice of Violation (NOV) in which Applicant violated technical specifications (TSs) concerning RWP. For example, NOV 295(304)/92034 cites violation of TS 6.2.2 when an operator entered a high radiation area without the correct RWP. Petitioner himself has witnessed violations of procedure, including improper instruction regarding PIFs: One of Petitioner's supervisors asked him illegally to change information on PIF Number Z1998-00041 which was generated by Petitioner. In addition, the NRC Staff has noted

numerous instances in which Applicant did not follow procedures, subsequently resulting in the issuance of numerous NOVs, including, but not limited to, those listed in Exhibit 4. The NRC has also issued Notices of Violation citing the *willful* violation of procedure, including, but not limited to, NOV 295(304)/94008-01 in violation of TS 6.2.2.a.

In an attempt to hide some of the QA breakdown, Applicant has entered into agreements (i.e. protective orders) which prevent Petitioner from discovering matters relevant to this proceeding. These protective orders must be vacated, in part, to allow Petitioner permission to interview all persons who have executed such agreements over the past fifteen years in order to obtain information relevant to this proceeding. One such agreement is the subject of an ongoing 2.206 petition filed in the Robarge matter by the National Whistleblower Center. However, regardless of the outcome of that proceeding, the Petitioner has a right to interview potential witnesses, and the Applicant cannot use protective orders or any other form of agreement to prohibit Petitioner from learning additional facts to support this petition. 10 C.F.R. § 50.7(g). In a Director's Decision, the use of a private contract to hide information from a party to a licensing proceeding, such as Mr. Dienethal, was found to be void and illegal. Texas Utilities Electric Co., 37 NRC 477, Director's Decision (1993), slip op. DD-93-12. See also "Preserving the Free Flow of Information to the Commission," 55 Fed. Reg. 10397, 10402 (1990).

Throughout its existence, employees at Plant Zion have not been properly trained in QA requirements. During the hearing in Robarge, expert witness Mr. Mosbaugh reviewed various documentation related to the Zion QA program and interviewed at least one Zion employee with knowledge of the QA program. Mr. Mosbaugh testified, under oath, that Zion appeared to have a QA breakdown.

Mr. Mosbaugh's entire testimony is included as part of the basis for this contention, as is the testimony provided at the Robarge DOL proceeding given by Randy Robarge, Jerry Ruffolo, Mike Masosput, Robert Chavez, Russ Satterfield, Al Vedder, Brent Robinson, Ron Schuster, Petitioner, Alan Brown, Rodney Bauman (by deposition) and John Meyers (by deposition). In addition, the entire transcript of Robarge and the entire record of Robarge (including pre-trial depositions, correspondence between counsel, and in-court testimony by witnesses for Commonwealth Edison) are part of the basis for this contention.

Finally, Applicant's QA breakdown was one of the root causes of the premature shut-down of Plant Zion. If this root cause is not properly investigated, identified, and corrected, numerous health and safety violations will occur or re-occur during the decommissioning phase of Plant Zion.

On July 31, 1998 Mr. Edwin Dienethal filed his Amended Petition to Intervene and Statement of Contentions in a related NRC proceeding (ASLBP No. 98-744-04-LA). In that filing, Mr. Dienethal made reference to the complete Department of Labor whistleblower proceeding concerning the claims filed by Mr. Robarge. Although the entire DOL record in the Robarge proceeding was referenced as a basis for the contentions in ASLBP No. 98-744-04-LA, in order to avoid any confusion as to the relevance of portions of the Robarge proceeding to this petition to intervene, the Petitioners hereby explicating additional facts contained in the Robarge proceeding.

Exhibit 11 contains additional redacted excerpts from the DOL hearing conducted in the Robarge proceeding (98-ERA-2). Mr. Brent Robinson testified at the Robarge proceeding. Mr. Robinson worked in the nuclear power area since 1981 and worked at Plant Zion for "the past 14

years.” Ex. 11, Tr. 265. Mr. Robinson was a supervisor who worked in the Plant Zion radiation chemistry department and the radiation protection department. He worked as an “operational lead health physicist in the ALARA group and became the lead Radiation Protection Supervisor at Plant Zion in 1996. Along with the lead position, he also was the ALARA supervisor during that time period. Ex. 11, Tr. 265-69.

Mr. Robinson was questioned about a radiation protection supervisor (the same supervisor identified by the other ComEd witnesses as having violated procedures). Mr. Robinson testified, under oath, that this supervisor had the reputation as a “get-the-work-done type person” who “didn’t reference procedures.” Ex. 11, Tr. 284.

Mr. Robinson also provided testimony on PIF Wars. He confirmed that PIF Wars existed on-site. He also confirmed the fact that Applicant never provided any “formal training” concerning PIF Wars, and only addressed the issue through “informal direction.” Ex. 11, Tr. Pp. 306-07.

Mr. Randy Robarge also provided testimony during the Robarge proceeding. He testified extensively about his background and work experience in the nuclear area and at ComEd. Ex. 11, Tr. 470-539. This testimony clearly establishes his expert qualifications concerning a number of matters at issue in this proceeding. Id.

Mr. Robarge confirmed the fact that employees “would not generate PIFs when problems became known.” Ex. 11, Tr. 582. He testified that employees were “told not to generate PIFs” and testified that, on one occasion, a PIF he had drafted was “ripped up.” Id., Tr. 582-83. He also testified that a “chilling effect” existed concerning some persons who did not file PIFs. Id. He also testified that the practice of requiring employees to submit PIFs to levels of supervision

not referenced in the PIF procedures would have a chilling effect on employee PIF writing. Id., Tr. 595-96. Mr. Robarge also testified that PIF Wars existed at Plant Zion and that management never conducted trainings on this problem. Id., Tr. 584-85

Mr. Robarge provided extensive testimony concerning a number of PIFs he wrote in 1996. Id. Tr. 610-70. He testified about the continuing problem at Plant Zion regarding finding radioactive materials outside of the radiation protection areas (“RPA”) and the failure of Applicant to keep its radiation monitors properly working Id., Tr. 613-14, 621-22 and 627-29. Additionally, Applicant violated procedures by returning radiation monitors to service without properly testing the monitors. Id., Tr. 627-29. He also testified concerning on-going violations of radiation protection requirements, such as persons eating and drinking in the protected areas. Id., Tr. 618-19.

Mr. Robarge provided extensive testimony concerning an incident which arose on November 1, 1996. Id., Tr. 630-670. This is a very significant incident. It started when a person was found contaminated with a hot particle after they had left the radiation protection area. Id., Tr. 630-32. Specifically, this person was “supposed to have gone through some form of detection system which would determine” if he carried contamination prior to leaving the “RPA.” For whatever reason, this person was found outside of the RPA with contamination on his person. Id.

Moreover, the person who was found to have the contamination on his person was questioned and it was determined that this person had not entered the RPA. Thus, the contamination most likely came from an area which should have been free from radiation. Id., Tr. 637.

On November 4, 1996 the existence of radioactive material outside of the RPA was confirmed. The material was found in the IM Shop. Id., Tr. 642-44. The contamination was found in numerous locations at the IM Shop, including the workbench. Contaminated gauges were found on a “lunch counter” and contamination was found next to the “coffee pot.” Id., Tr. 643. Contamination was found where employees “took their breaks” and “ate cookies.” Id.

The contaminated gauges had been improperly transported from the RPA area to a non-RPA area. Id., Tr. 644. The Radiation Protection department should have prevented this from happening. Id., Tr. 645. The existence of contaminated gauges outside of the RPA indicated that contamination could have been spread to other areas beside the IM Shop. Id., Tr. 650-51.

Applicant has failed to control radioactive materials, not only at Plant Zion, but at other facilities as well. This failure is a “reoccurring problem” and indicates that the quality control process at Plant Zion (and throughout ComEd) is not working. Id., Tr. 664-65. The failure of employees to file PIFs has contributed to this problem. Due to the quality assurance breakdown in the problem identification process, Applicant has not been able to properly trend problems. Id.

In fact, a witness called by Applicant during the Robarge proceeding confirmed that Plant Zion had a major problem with radioactive material (“RAM”) being found outside of the protected areas. At the hearing Applicant called Mr. Gregory Kassner as a witness. Ex. 11, Tr. 1210. Mr. Kassner currently works for INPO. However, he worked for 13 years for the Applicant and served at the top manager of the radiation protection department at Plant Zion between 1993-96. Id., Tr. 1211, 1216-17.

Mr. Kassner confirmed that, as a result of only one survey, “a good number” of items (approx. 60-70) contaminated with radiation, which had been improperly identified and

improperly labeled were found outside of the RPA at Plant Zion. Id., Tr. 1370-71.

Moreover, Mr. Kassner testified concerning a violation of NRC safety procedures in a matter in which a 1000 millirem particle (at 30 centimeters) was found unprotected and unlabeled. Id., 1347-49. Mr. Kassner admitted that the practice which had caused this violation had existed for years on-site. He also confirmed that after the violation was identified, no efforts were made to “determine how widespread the practice was and how deficient” the “department” was concerning the procedural violations which caused this major safety concern. Id., Tr. 1348. Mr. Kassner also confirmed that Mr. Robarge informed him that the improper practices had been “going on for years.” Id., Tr. 1348-49.

In regard to PIFs, Mr. Kassner was confronted with INPO findings which confirmed that his department did “not generate problem identification forms for radiological occurrences” and that “as a result, radiological protection and station management are insufficiently aware of problems or their root causes.” Id., Tr. 1368. Although he originally denied knowledge of these INPO findings, he finally admitted that he was aware that INPO had criticized his department’s inability to “generate PIFs” in June of 1996. Id., Tr. 1369.

In addition, Mr. Kassner provided testimony concerning the PIF procedure. His testimony confirmed the rendition of the PIF process testified to by other employee’s of the Applicant, including persons who should be exercising management control over that process. Mr. Kassner’s testimony provides additional evidence that upper management within ComEd has failed to properly implement or police the PIF process. Id., Tr. 1373-93.

For each of the reasons set forth above, the NRC and the Applicant cannot meet the burden set forth under 10 C.F.R. § 50.92. In addition, this material further demonstrates why a



finding of no significant hazards cannot be issued in this matter and why a stay should be entered preventing the July 24, 1998 decision of the NRC Staff from being implemented.

## CONTENTION 2

Statement Required under 10 C.F.R. § 2.714(b)(2): The Applicant engages in wilful and knowing violations of mandatory safety related procedures and the harassment and intimidation of employee's who seek to raise safety concerns. Due to these practices, Applicant cannot insure that any of the work to be performed under any of the proposed amendments to the license shall be performed in a manner consistent with the controlling procedures, regulations, laws, and/or the requirements of public safety. See, Applicant's Application, Attachment A.

Brief Explanation of Basis for Contention Required under 10 C.F.R. § 2.714(b)(2)(I) and the Concise Statement of Facts, Opinion, and References which Support Contention Required under 10 C.F.R. § 2.714(b)(2)(ii): The basis for this contention is contained in the explanation section for Contention 1 and 3.

For each of the reasons set forth above, the NRC and the Applicant cannot meet the burden set forth under 10 C.F.R. § 50.92. In addition, this material further demonstrates why a finding of no significant hazards cannot be issued in this matter and why a stay should be entered preventing the July 24, 1998 decision of the NRC Staff from being implemented.

## CONTENTION 3

Statement Required under 10 C.F.R. § 2.714(b)(2): The Applicant cannot be granted any license amendments which would directly or indirectly permit it to conduct any future work at Plant Zion or participate in any manner in the decommissioning process. The Applicant lacks the character, competence, and integrity to engage in any licensed activities at Plant Zion,

including those licensed activities which would be directly or indirectly authorized under the pending amendments to the license. See, Applicant's Application, Attachment A.

Brief Explanation of Basis for Contention Required under 10 C.F.R. § 2.714(b)(2)(I) and the Concise Statement of Facts, Opinion, and References which Support Contention Required under 10 C.F.R. § 2.714(b)(2)(ii): For all of the reasons set forth in the explanation section for Contention 1, Applicant lacks the competence, character, and integrity to operate Plant Zion. This lack of competence, character, and integrity is also documented in the numerous NOVs issued by the NRC staff during the preceding six year time period and the numerous Licensee Event Reports (hereinafter "LER") filed by the applicant for which it was unable to close-out. See, e.g. Exhibits 3 and 4. Also see, NOV 295(304)/97003-0, citing the violation of TS 3.13.2.a.1 which resulted from a breakdown of the QA Program at Plant Zion, an issue *which still remains open* concerning an error in the original design of part of the ventilation system causing effluent to escape the fuel building. LER 93002 was issued by the NRC citing the violation of TS 3.14.3.c.

Additionally, Applicant lacked the character, competence, and integrity to properly correct many of the problems identified in these notices. Applicant maintained a secret personnel filing system to hide the true extent of the incompetence, lack of integrity, and lack of character of its work force. During the Robarge DOL hearing, counsel for Mr. Robarge made on-the-record references to this filing system and requested that the documents contained within that system be produced. See Robarge, 98-ERA-2. Because the Robarge case settled prior to the completion of the hearing process, those records were not produced. However, they were identified on-the-record and, as set forth on-the-record in Robarge, contain relevant material

concerning this contention and the method and manner in which the Applicant has responded to the misconduct (including criminal misconduct) of employees.

In addition, Applicant's lack of competence, character, and integrity is one of the root causes of the premature shut-down of Zion. If this root cause is not properly investigated, identified, and corrected, numerous health and safety violations will occur or re-occur during the decommissioning phase of Plant Zion.

For each of the reasons set forth above, the NRC and the Applicant cannot meet the burden set forth under 10 C.F.R. § 50.92. In addition, this material further demonstrates why a finding of no significant hazards cannot be issued in this matter and why a stay should be entered preventing the July 24, 1998 decision of the NRC Staff from being implemented.

#### CONTENTION 4

Statement Required under 10 C.F.R. § 2.714(b)(2): Applicant's proposal to amend its license to allow use of the Zion Station Custom Technical Specifications (hereinafter "CTS") and to abandon its requirement to utilize the Improved Technical Specifications (hereinafter "ITS") must be rejected. See, Applicant's Application, Attachment A.

Brief Explanation of Basis for Contention Required under 10 C.F.R. § 2.714(b)(2)(I) and the Concise Statement of Facts, Opinion, and References which Support Contention Required under 10 C.F.R. § 2.714(b)(2)(ii): The CTS has serious problems which required Zion to implement numerous field or other modifications. The ITS was an improvement on the CTS and enhanced the safety of the plant. The failures of the CTS, in part, contributed to the systematic quality assurance breakdown at Zion which has resulted in the shut down of Zion. The continued use of the CTS constitutes a serious safety hazard. The ITS must come into use as required

under the current license, and any changes to the ITS, or the implementation of new technical specifications, must undergo the review and approval process mandated under law, regulation, and subject to the specific approval of this Board.

During the Robarge DOL proceeding significant testimony was introduced concerning the problem with procedures at Plant Zion. For example, during his deposition, Mr. Rodney Bauman, a health physicist supervisory employee who had worked at Zion for six years, testified that the procedures used onsite were out of date, difficult to follow and referenced instruments which no longer existed. Postings for radiological controls were also “substandard.” Ex. 5, Tr. 37-38.

Additionally, Applicant failed to adhere to the requirements of the CTS. This is documented in numerous NOV’s and other public source documents in which the NRC staff noted problems with Applicant’s ability to follow technical specifications. See Exhibits 3-4. There should be no downgrading of the technical specifications until the root cause behind Applicant’s failure to adhere to existing specifications is identified and corrected.

The NRC Commission has issued a Final Policy Statement on Technical Specifications Improvement for Nuclear Power Reactors, Vol. 58, No. 139 Federal Register 39132 (July 22, 1993) in which the NRC has recognized that implementation of “improved” technical specifications, such as the ITS, were “expected to produce an improvement in the safety of nuclear power plants.” Id. The goal behind the ITS was to “include greater emphasis on human factors principles in order to add clarity and understanding” to the technical specifications at nuclear plants. Id., 39133.

Any future return to parts of the CTS must be individually analyzed and reviewed in light

of the entire ITS and the history of problems with the CTS. If any specific CTS procedure or requirement shall be re-implemented, this must be accomplished on a procedure-by-procedure basis. All such changes must be approved by this Licensing Board.

Additional bases for this contention are contained in the explanation sections of Contention 1 and Contention 3.

For each of the reasons set forth above, the NRC and the Applicant cannot meet the burden set forth under 10 C.F.R. § 50.92. In addition, this material further demonstrates why a finding of no significant hazards cannot be issued in this matter and why a stay should be entered preventing the July 24, 1998 decision of the NRC Staff from being implemented.

#### CONTENTION 5

Statement Required under 10 C.F.R. § 2.714(b)(2): The Site Vice President position should not be eliminated. See Applicant's Application, Attachment A.

Brief Explanation of Basis for Contention Required under 10 C.F.R. § 2.714(b)(2)(I) and the Concise Statement of Facts, Opinion, and References which Support Contention Required under 10 C.F.R. § 2.714(b)(2)(ii): Plant Zion has witnessed a systemic breakdown of its QA program and the existence of numerous wilful violations of mandatory procedures. Any reduction in the accountability of corporate for these problems, and any reduction in the level of management oversight, will increase the QA breakdown already in existence. This QA breakdown contributed, in part, to the shutdown of Plant Zion, and any management actions which may contribute to the continuation of this breakdown cannot be approved or tolerated.

A corporate vice president is also needed onsite to directly oversee the actions of the plant manager or decommissioning plant manager, as the plant manager may be unwilling to

self-identify problems and safety issues which may make himself or herself appear incompetent.

Additional bases for this contention are contained in the explanation sections of Contention 1 and Contention 3.

For each of the reasons set forth above, the NRC and the Applicant cannot meet the burden set forth under 10 C.F.R. § 50.92. In addition, this material further demonstrates why a finding of no significant hazards cannot be issued in this matter and why a stay should be entered preventing the July 24, 1998 decision of the NRC Staff from being implemented.

#### CONTENTION 6

Statement Required under 10 C.F.R. § 2.714(b)(2): The Fuel Handler Training and Retraining Program (Program) cannot be approved, and all management changes premised on persons being qualified under this procedure cannot be approved, until the Program is augmented to meet the particular needs of Plant Zion and amended in a manner consistent with this contention. See, Applicant's Application, Attachment A. See also Attachment A, 1, 7, 9. Additionally, the Applicant filed a copy of its training Program with the NRC. See Brons to NRC, letter dated March 16, 1998 (including an Attachment A which consisted of the Zion Station Certified Fuel Handler Training and Retraining Program).

Brief Explanation of Basis for Contention Required under 10 C.F.R. § 2.714(b)(2)(I) and the Concise Statement of Facts, Opinion, and References which Support Contention Required under 10 C.F.R. § 2.714(b)(2)(ii): The training program must address the systemic breakdown of the QA program at Zion, the existence of numerous wilful violations at Plant Zion, and the failure of Commonwealth Edison to properly manage Zion. The Program must address the systemic management and quality issues which resulted in the untimely shut down of Plant Zion.

Modeling this Program after Trojan and Maine Yankee fails to address the specific problems which have existed and continue to exist at Plant Zion, problems which rendered the plant inoperable and constitute a direct and grave threat to the public health and safety.

The Program placed on the public record fails to contain specific information about exactly what will be included in the training and who will be conducting the training. See Brons to NRC, letter dated March 16, 1998

Information was produced during Robarge concerning the qualifications of persons employed by the Applicant to perform trainings. During the testimony of Mr. Schuster (including his under oath testimony and the offer of proof introduced by counsel for Mr. Robarge), information was placed on the record indicating that persons with considerable responsibility for trainings at Plant Zion may have engaged in serious criminal activity, implicating these persons character and competence to engage in any employment at a nuclear facility. It was also evident from this testimony that high ranking officials for the Applicant would have known of this conduct but failed to take adequate action concerning this conduct.

A review of the Program submitted to the NRC demonstrates its problematic nature. See Brons to NRC, letter dated March 16, 1998. Section 1.0 of the Program allows the Applicant to make changes to the Program without “prior” NRC “approval.” Additionally, the Program authorizes Applicant to develop a retraining program. The retraining program does not need NRC approval and appears to give the Applicant full discretion concerning the contents, examination requirements (if any), and other rules related to the retraining program. These exemptions and deficiencies could be abused, and given the past misconduct at Plant Zion, it is reasonable to assume they would be abused. The NRC has issued NOV 295(304)/96021-07

because Applicant violated TS 6.1.5 and ANSI N18.1 by lacking the proper training in Department of Transportation and NRC regulatory requirements.

The Program allows Applicant to exempt persons from the training requirements. See Program Sections 1.0, 2.3.3 and 3.4.2. This authority can easily be abused, and Applicant would be able to override the training requirements anytime it needs to meet a schedule, save money, or exempt a personal friend from the training requirements. Given the systemic QA breakdown and the continued existence of wilful violations of plant procedures, this exemption cannot be approved. See Exhibits 3-8.

Page A-1 of the training program contains the areas for which written examinations would be administered to employees. Given the problems identified in Contentions 1 and 3, the training must also include trainings on the PIF process, the employee concerns process, the QA process, and the personal responsibility employees have to report misconduct and to refrain from intentional violations of procedures.

Given the complete lack of quality work performed onsite, as evidenced in this filing, whatever Program is finally approved must be a high-quality training program for which all plant personnel-- including the Site VP and the Decommissioning Plant Manager --must take and must pass. No employee of Plant Zion should be able to “grandfather” pre-approvals for this training. Simply stated, the plant has had so many safety-related problems, as documented in the NRC NOV referenced in this filing, the decision of Applicant to prematurely shut down Plant Zion due to its inability to properly manage the project and as documented in Robarge, all employees at the site must be required to take and pass an augmented training program.

Additional bases for this contention are contained in the explanation sections of



Contention 1 and Contention 3. In this regard, any training program at Plant Zion must include very detailed trainings concerning problem identification, the rights of employees to blow the whistle, and the importance of strict adherence to QA procedures.

For each of the reasons set forth above, the NRC and the Applicant cannot meet the burden set forth under 10 C.F.R. § 50.92. In addition, this material further demonstrates why a finding of no significant hazards cannot be issued in this matter and why a stay should be entered preventing the July 24, 1998 decision of the NRC Staff from being implemented.

#### CONTENTION 7

Statement Required under 10 C.F.R. § 2.714(b)(2): The Applicant request for permission to delete section 6.4 from the CTS must be denied. See, Applicant's Application, Attachment A. See also Attachment A, 8.

Brief Explanation of Basis for Contention Required under 10 C.F.R. § 2.714(b)(2)(I) and the Concise Statement of Facts, Opinion, and References which Support Contention Required under 10 C.F.R. § 2.714(b)(2)(ii): The current ITS specifically references those parts of the Zion QA plan which would require the types of reporting required under CTS 6.4. Simply deleting 6.4, without appropriately compensating for this requirement, is inconsistent with the public health and safety. Additionally, this amendment request should be denied as Applicant should not be permitted to revert back to the CTS.

Additional bases for this contention are contained in the explanation sections of Contention 1 and Contention 3.

For each of the reasons set forth above, the NRC and the Applicant cannot meet the burden set forth under 10 C.F.R. § 50.92. In addition, this material further demonstrates why a

finding of no significant hazards cannot be issued in this matter and why a stay should be entered preventing the July 24, 1998 decision of the NRC Staff from being implemented.

## CONTENTION 8

Statement Required under 10 C.F.R. § 2.714(b)(2): Applicant's request to use Certified Fuel Handlers instead of licensed personnel must be denied. See Applicant's Application, Attachment A. See also Attachment A, 6-7.

Brief Explanation of Basis for Contention Required under 10 C.F.R. § 2.714(b)(2)(I) and the Concise Statement of Facts, Opinion and References which Support Contention Required under 10 C.F.R. § 2.714(b)(2)(ii): First, the NRC has specific authority to take individual licensing action against any person who is personally licensed by the NRC. Given the breakdown in the Zion QA program, any change to the license which minimizes the oversight authority of the NRC over the conduct of individual supervisors or managers must be denied. Second, Applicant has not demonstrated that the training program for the Fuel Handlers will meet the needs of the public health and safety. Third, there is no evidence that the Fuel Handlers will be trained or able to properly work during an accident condition as well as licensed personnel will be able to work. Fuel Handlers would not have the training, education, and background to make proper safety-related decisions during an accident condition, and they would lack this training/background to conduct or supervise proper root cause reviews. In addition, a licensed system engineer is needed to oversee the relevant system(s).

Additional bases for this contention are contained in the explanation sections of Contention 1 and Contention 3.

For each of the reasons set forth above, the NRC and the Applicant cannot meet the

burden set forth under 10 C.F.R. § 50.92. In addition, this material further demonstrates why a finding of no significant hazards cannot be issued in this matter and why a stay should be entered preventing the July 24, 1998 decision of the NRC Staff from being implemented.

#### CONTENTION 9

Statement Required under 10 C.F.R. § 2.714(b)(2): Applicant's proposal to have only one licensed person in the control room must be rejected. See Applicant's Application, Attachment A. See also Appendix p. 9.

Brief Explanation of Basis for Contention Required under 10 C.F.R. § 2.714(b)(2)(I) and the Concise Statement of Facts, Opinion, and References which Support Contention Required under 10 C.F.R. § 2.714(b)(2)(ii): No less than two licensed personnel, one of which should be a nonunion individual, must be on-duty in the control room at all times. Limiting the number of persons employed in the control room creates a direct and immediate threat to the public health and safety. If only one such person worked in the control room, numerous reasonably foreseeable contingencies could not be properly addressed. The examples are infinite: what if the employee falls asleep, what if the employee has a medical emergency, what if the employee must leave his station due to an onsite emergency which needs his attention, what if the employee is disgruntled about union-management negotiations, what about the need for second verifications for instrument readings, what about the propensity to improperly ignore plant instrumentation? Simply stated, this proposal strongly suggests that cost-saving measures are clouding the judgement of the Applicant.

Applicant not only requests that only "one qualified person" be required to "stand watch in the control room," Applicant also requests that the definition of who is "qualified" be further

watered down, to permit non-licensed personnel to operate the control room and monitor the control room. This request is irresponsible. No less than two licensed personnel, properly trained and properly qualified, one of which should be a nonunion member, should be on-duty, at all times, to “stand watch” in the control room. The risk of accident, and risk that an accident would not be properly responded to, and the risk that a mistake would be made in this critical function, outweighs the cost-saving needs of the Applicant.

Finally, given the QA Breakdown and lack of character, competence, and integrity contained in the explanation sections of Contention 1 and Contention 3, eliminating the implicit oversight and accountability function of having two licensed persons in the control room cannot be justified.

Additional bases for this contention are contained in the explanation sections of Contention 1 and Contention 3.

For each of the reasons set forth above, the NRC and the Applicant cannot meet the burden set forth under 10 C.F.R. § 50.92. In addition, this material further demonstrates why a finding of no significant hazards cannot be issued in this matter and why a stay should be entered preventing the July 24, 1998 decision of the NRC Staff from being implemented.

#### CONTENTION 10

Statement Required under 10 C.F.R. § 2.714(b)(2): Applicant’s request to eliminate the “continuous onshift presence a of Radiation Protection Person” must be denied. Attachment A, 12.

Brief Explanation of Basis for Contention Required under 10 C.F.R. § 2.714(b)(2)(I) and the Concise Statement of Facts, Opinion, and References which Support Contention Required

under 10 C.F.R. § 2,714(b)(2)(ii): This request Applicant is completely irresponsible and again indicates that the Applicant is overly concerned with cutting costs and no longer is competent or capable of properly managing Plant Zion. It is absolutely necessary to have a Radiation Protection Person on site to ensure the safety of Plant Zion employees and the general public. By eliminating a “continuous onshift presence”, Applicant will increase the possibility of unnecessary and excess radiation exposure and increase the likelihood of harm inflicted on employees and the general public. A Radiation Protection Person needs to be onsite at all times to prevent radiation from leaving the protected areas or to quickly rectify the problem if the radiation is brought into unprotected locations. The presence of this person will also decrease the possibility of radiation being taken off-site, contaminating the community. The Radiation Protection program at Plant Zion has been riddled with intentional violations by supervisors and continuous and significant quality assurance problems. During the Robarge hearing, numerous witnesses testified to a complete breakdown of QA within that department. That evidence introduced by the Complainant in that case, which is part of the public record, is hereby incorporated by reference as part of the basis to this contention.

Additionally, during the discovery phase of the Robarge proceeding, evidence was introduced in depositions concerning the QA breakdown within the Radiation Protection Department. See Exs. 5-8. For example, Mr. Bauman testified that radiation monitors were “substandard” and the ability of the Applicant to properly “inform workers” of potentially unsafe “radiological conditions” at Zion were also “substandard.” In this regard, in the Department of Labor case of Boudrie v. Commonwealth Edison, (Administrative Law Judge No. 94-ERA-15) it was proven that radioactive materials were improperly removed from Plant Zion and carried

home, undetected, by employees. The record in the Bourdie proceeding is hereby incorporated by reference.

Moreover, Mr. Robarge (and other persons with expertise in radiation protection) shall testify as of the problems inherent in accepting this amendment. For example, during the Robarge DOL hearing, documentary and oral testimony was placed on the record (and information was produced during discovery, which was required to be returned, uncopied, to the Applicant) demonstrating a complete QA breakdown within the area of radiation protection. This included, but was not limited to, numerous examples of radioactive particles being located outside of the radiation control areas, including radioactive particles being found at locations where employees ate.

As part of Contention No. 1, the Petitioners have discussed the testimony contained in Exhibit No. 11. This testimony, specifically the testimony of Mr. Robarge and Mr. Kassner, confirms the existence of a wide-spread contamination problem at Plant Zion. The testimony was summarized in Contention No. 1 and need not be duplicated here, as all of the facts contained in Contention No. 1 are incorporated, by reference, into this contention.

However, the record in this matter confirms that not only should Applicant be denied permission to downgrade its radiation protection department, but Applicant must upgrade that department. The undisputable evidence demonstrates that radiation monitors did not work, that radiation protection supervisors wilfully ignored procedures concerning the handling of “hot particles,” that Applicant failed to conduct proper root cause reviews of radiation issues, that “hot particles” left the RPA and were later found both outside the RPA on-site (i.e. at “lunch counters” and other locations) and were found off-site, in employee hotel rooms. See, e.g. the

public record in Boudrie v. Commonwealth Edison, U.S. Department of Labor Office of Administrative Law Judge file No. 94-ERA-15.

On the basis of these materials, an emergency stay should be granted on that portion of Applicant's proposed amendments which would allow a reduction in the radiation support staff and the managers or operators who have any oversight responsibility whatsoever in the area of radiation protection. The record indicates that, under no circumstances, can the Applicant or the NRC Staff meet their respective burdens on this issue as set forth under 10 C.F.R. § 50.92. In this regard, the Petitioners are prepared to participate in an emergency, on-the-record hearing on this matter. Petitioners also reserve the right to file for injunctive relief should the NRC fail to stay this matter.

Additional bases for this contention are contained in the explanation sections of Contention 1 and Contention 3.

For each of the reasons set forth above, the NRC and the Applicant cannot meet the burden set forth under 10 C.F.R. § 50.92. In addition, this material further demonstrates why a finding of no significant hazards cannot be issued in this matter and why a stay should be entered preventing the July 24, 1998 decision of the NRC Staff from being implemented.

#### CONTENTION 11

Statement Required under 10 C.F.R. § 2.714(b)(2): No amendments to Applicant's license should be granted until the LERs are fully reviewed. See Applicant's Application, Attachment A.

Brief Explanation of Basis for Contention Required under 10 C.F.R. § 2.714(b)(2)(I) and the Concise Statement of Facts, Opinion, and References which Support Contention Required

under 10 C.F.R. § 2.714(b)(2)(ii): When Applicant accounted that Plant Zion would be prematurely shut down, a large number of LERs were open and under review. As a consequence of announcing the shut down of the plant, the NRC gave Applicant permission to close every open LER. This was evidenced by a letter Mr. Randy Robarge obtained in discovery of his DOL case which apparently he was required to return to Commonwealth Edison. In any event, the LERs in question clearly could be materially relevant to the issues raised in the proposed amendments and the contentions raised herein. The blanket closure of these numerous LERs was inappropriate.

Completing LERs and properly conducting the root cause analysis required under the LER process is an essential component of the nuclear safety program. The NRC Staff and Applicant must be required to review each of the closed LERs and set forth specific justification as to why, under no reasonable circumstances, each and every safety-related issue implicated in the LER has no relevance whatsoever to the current safety of Plant Zion, any of the work implicated by applicants proposed license amendments and/or any work which may be performed during the decommissioning process. If any LER does contain matters which may have relevance to the current safety of Plant Zion and/or any work which may be performed in the future at Plant Zion, said LER must be completed and submitted to this Board for final approval. Until all such LER issues are addressed, and it is demonstrated that no outstanding issue contained in any of the LERs would impact on any of the amendments proposed by the Applicant, no amendment to the Applicant's license should be approved.

Additional bases for this contention are contained in the explanation sections of Contention 1 and Contention 3.



For each of the reasons set forth above, the NRC and the Applicant cannot meet the burden set forth under 10 C.F.R. § 50.92. In addition, this material further demonstrates why a finding of no significant hazards cannot be issued in this matter and why a stay should be entered preventing the July 24, 1998 decision of the NRC Staff from being implemented.

## CONTENTION 12

Statement Required under 10 C.F.R. § 2.714(b)(2): No amendments can be approved until the Applicant demonstrates that it has proper knowledge of the actual condition of Plant Zion. See, Applicant's Application, Attachment A.

Brief Explanation of Basis for Contention Required under 10 C.F.R. § 2.714(b)(2)(I) and the Concise Statement of Facts, Opinion, and References which Support Contention Required under 10 C.F.R. § 2.714(b)(2)(ii): Due to the QA breakdown, and the lack of character, competence, and integrity, which were explicated in explanation sections of Contention 1 and Contention 3, the Applicant does not have current knowledge of the actual condition of Plant Zion. For example, due to the "PIF wars" which existed onsite, problem identification forms were not filed. The failure of Applicant to insure that these forms were filed as resulted in the inability of Applicant to be aware of problems which exist onsite. In addition, due to the numerous wilful and non-wilful violations of procedure, the Applicant cannot demonstrate proper knowledge of actual plant conditions and cannot properly justify any amendments to its license.

Additional bases for this contention are contained in the explanation sections of Contention 1 and Contention 3.

For each of the reasons set forth above, the NRC and the Applicant cannot meet the

burden set forth under 10 C.F.R. § 50.92. In addition, this material further demonstrates why a finding of no significant hazards cannot be issued in this matter and why a stay should be entered preventing the July 24, 1998 decision of the NRC Staff from being implemented.

### CONTENTION 13

Statement Required under 10 C.F.R. § 2.714(b)(2): The change to the specifications concerning the use of overtime (6.2.1) must be denied. See, Applicant's Application, Attachment A, 7.

Brief Explanation of Basis for Contention Required under 10 C.F.R. § 2.714(b)(2)(I) and the Concise Statement of Facts, Opinion, and References which Support Contention Required under 10 C.F.R. § 2.714(b)(2)(ii): Mr. Robarge and other witnesses shall testify to the widespread abuse of overtime at Plant Zion and how this use of overtime created safety problems within the plant. The proposed amendments further waters down the overtime rules and creates an ambiguous definition as to who is covered under those rules. Given the past abuses of overtime, and how the over-use of overtime has created safety problems, this proposal should not be approved. The NRC has issued NOV's concerning overtime, including, but not limited to, NOV 97013-02 which cites the violation of TS 6.2.1.i because of management oversight of overtime; and NOV 97013-02 which cites the violation of TS 6.2.1.i in which overtime guidelines were not met.

Additional bases for this contention are contained in the explanation sections of Contention 1 and Contention 3.

For each of the reasons set forth above, the NRC and the Applicant cannot meet the burden set forth under 10 C.F.R. § 50.92. In addition, this material further demonstrates why a

finding of no significant hazards cannot be issued in this matter and why a stay should be entered preventing the July 24, 1998 decision of the NRC Staff from being implemented.

#### CONTENTION 14

Statement Required under 10 C.F.R. § 2.714(b)(2): “Leak Path” safety problem. See, Applicant’s Application, Attachment A.

Brief Explanation of Basis for Contention Required under 10 C.F.R. § 2.714(b)(2)(I) and the Concise Statement of Facts, Opinion, and References which Support Contention Required under 10 C.F.R. § 2.714(b)(2)(ii): The changes requested by the Applicant, specifically those changes related to qualifications, staffing, and training, cannot be granted until the “Leak Path” safety problem is properly identified and permanently corrected. Specifically, Mr. Dienethal (and other persons) shall provide expert testimony regarding the “Leak Path” concern. Briefly stated, the “Leak Path” issue is caused by the current non-operational condition of the Reactor Coolant Systems and various other systems. During system operation, the pressure from the system and liquid that runs through the system keep the seals and packing lubricated. Because the system is currently not in use and thus not being lubricated, it is highly likely that the packing and seals for the system components have dried out and cracked, which would create a potential leak path.

If the system is used again before the issue of dried out and cracked seals and packing is addressed, there is an enormous potential for disaster because the system may potentially release radioactive fuel into the atmosphere via direct ventilation that connects the system directly to outside Plant Zion.

Additional bases for this contention are contained in the explanation sections of

Contention 1 and Contention 3.

For each of the reasons set forth above, the NRC and the Applicant cannot meet the burden set forth under 10 C.F.R. § 50.92. In addition, this material further demonstrates why a finding of no significant hazards cannot be issued in this matter and why a stay should be entered preventing the July 24, 1998 decision of the NRC Staff from being implemented.

#### CONTENTION 15

Statement Required under 10 C.F.R. § 2.714(b)(2): “Spent Fuel Pool” safety issue. See Applicant’s Application, Attachment A.

Brief Explanation of Basis for Contention Required under 10 C.F.R. § 2.714(b)(2)(I) and the Concise Statement of Facts, Opinion, and References which Support Contention Required under 10 C.F.R. § 2.714(b)(2)(ii): Petitioner contends that the current fuel pool holding tank poses a serious threat of radioactive leakage that cannot be maintained or prevented effectively by Plant Zion. Specifically, Petitioner (and other persons) will testify that the fuel assembly tubing (otherwise referred to as assembly cladding), within the power plant, was poorly maintained during its use. Over time, foreign material from the outside environment (from poor maintenance practices and improper monitoring of inventory) entered the Reactant Cooler System. The debris then would bounce around in the system, eventually finding its way into the reactor. Once in the reactor, the foreign material would lodge between tubing (cladding) of the fuel assembly. At that point, the velocity of the Reactant Cooler Flow would contact this foreign material and allow it vibrate against the cladding of the fuel assembly to a point where it would chaff a hole in the cladding. At that point, raw radioactive fuel was been released into the Reactant Cooler System because the cladding damage was so great. As a result, regular outages

became severely more radiologically dangerous to personnel. This fuel, with the damaged cladding which leaks out a higher amount of radioactive particulate, is now stored in the fuel pool permanently.

This fuel pool, however, is not designed to accommodate the amount of raw radioactive fuel combined with debris and material from the cladding that it currently contains. The fuel, currently exposed to the water in the pool, is creating a potential safety danger beyond that which the apparatus and plant is equipt to handle: The fuel pool is designed with specific time and capacity limits, and those limits are currently overextended.

Plant Zion has underestimated the severity of any problem that may arise from the fuel pool because even the worst case scenario procedures fail to account for the levels of debris and cladding in the fuel. Consequently, efforts needed to combat a potential problem arising from a breach or leak in the pool equipment will be very shortcoming. The result will be a higher release of radioactive material into the atmosphere.

Additional bases for this contention are contained in the explanation sections of Contention 1 and Contention 3.

For each of the reasons set forth above, the NRC and the Applicant cannot meet the burden set forth under 10 C.F.R. § 50.92. In addition, this material further demonstrates why a finding of no significant hazards cannot be issued in this matter and why a stay should be entered preventing the July 24, 1998 decision of the NRC Staff from being implemented.

#### CONTENTION 16

Statement Required under 10 C.F.R. § 2.714(b)(2): The Applicant's request for amendment circumvents the Commission's decommissioning process by failing to provide a



valid decommissioning plan or acceptable alternative decommissioning, resulting in the unsafe removal of the plant from operational service. See Applicant's Application, Attachment A.

Brief Explanation of Basis for Contention Required under 10 C.F.R. § 2.714(b)(2)(I) and the Concise Statement of Facts, Opinion, and References which Support Contention Required under 10 C.F.R. § 2.714(b)(2)(ii): Commonwealth Edison Co. has determined that its Plant Zion has reached the end of its useful life and it has stated an intention to seek decommissioning. The Commission's definition of "decommissioning" states that it "means to remove a nuclear facility safely from service and to reduce residual radioactivity to a level that permits release of the property for unrestricted use and termination of the license." NUREG-0586, "Final Generic Environmental Impact Statement on Decommissioning of Nuclear Facilities," p. 2-5 (emphasis added). However, the Applicant's request to amend its license would result in reductions in the margin of safety, the safety-related staffing of the plant, the safety related technical specifications and the safety-related personnel conditions within the corporate structure, radiation protection and the control room prior to submitting a decommissioning plan for Plant Zion. See explanations in Contentions 1 through 15, above. Until Applicant submits a decommissioning plan and receives approval of such a plan from the Commission it must be considered an operational facility subject to the nuclear safety regulations and standards applicable to operating nuclear power plants. Applicant's request for amendment will violate these nuclear safety regulations and standards and place the public health and safety at risk. See explanations in Contentions 1 through 15, above.

Applicant wants these changes to its license without applying for a formal decommissioning, without submitting a decommission plan, and without NRC approval of

decommissioning. By not taking these appropriate steps, Applicant seeks through the requested amendment to its license the benefits of decommissioning without requesting and obtaining approval of a decommissioning plan in violation of NRC regulations and in violation of nuclear safety regulations, laws and standards. Granting the amendments will serve to delay the necessary safety review process which should be undertaken prior to the commencement of decommissioning and will permit Plant Zion, which is still an operational nuclear power plant, to avoid adherence to nuclear safety regulations and standards applicable to operational plants. More significantly, the Applicant's request for amendment is not an acceptable substitute for, or alternative to, decommissioning because it will place Plant Zion (during its pre-decommissioning phase) in a condition that will pose an unreasonable risk to the public health and safety. Prior to decommissioning Commonwealth Edison Co. should be required to conduct a review that includes a root cause analysis of why Plant Zion suffered from so many QA and other safety-related problems during the operational phase, and the Applicant should be required to provide a detailed plan to correct these problems prior to any approval of any amendment which is directly or indirectly related to decommissioning.

Additional bases for this contention are contained in the explanation sections of Contentions 1 through 15.

For each of the reasons set forth above, the NRC and the Applicant cannot meet the burden set forth under 10 C.F.R. § 50.92. In addition, this material further demonstrates why a finding of no significant hazards cannot be issued in this matter and why a stay should be entered preventing the July 24, 1998 decision of the NRC Staff from being implemented.



## CONTENTION 17

Statement Required under 10 C.F.R. § 2.714(b)(2): Plant Zion's Radiation Protection Monitors should not be eliminated, and those Radiation Protection Monitors which are remaining in use need to be upgraded and/or properly maintained. See Applicant's Application, Attachment A.

Brief Explanation of Basis for Contention Required under 10 C.F.R. § 2.714(b)(2)(I) and the Concise Statement of Facts, Opinion, and References which Support Contention Required under 10 C.F.R. § 2.714(b)(2)(ii): The Radiation Protection Monitors which are being eliminated through Commonwealth Edison's requested amendment are needed to protect the public health and safety, prevent the release of radiation and radiation contamination offsite and to protect workers at the plant from exposures to radiation. At Plant Zion active systems remain in operation which need to be properly maintained to protect the health and safety of Plant Zion employees and the general public. These monitors quantify the amount of radiation released into the area and quantify air quality radiation levels. See Affidavit of Randy Robarge, ¶ 11. The monitors need to be retained or replaced with updated monitors. Id. The monitors or upgraded monitors also need to be maintained and serviced to assure quality detection in accordance with nuclear safety regulations and accepted safety standards. Id. Without these monitors, improper levels of radiation may go undetected and radiation contamination may be released to the general public, plant workers, and the local environment, placing the health and safety of the community, plant workers, and their families in jeopardy. Id.

Plant Zion has a history of radiation and radiation contamination exposures of plant

workers and improper releases of radiation contamination off-site due to lax adherence to radiation protection procedures and faulty or malfunctioning radiation protection monitors. Petitioner will rely upon the NRC Notices of Violations and NRC Inspection Reports issued by the NRC concerning these issues in the last five years. In addition, Petitioner will rely upon the testimony, evidence and record presented in Steven Boudrie v. Commonwealth Edison Company, DOL Case No. 95-ERA-15, that demonstrates the Applicant's failure to meet radiation protection procedures and Plant Zion's faulty or malfunctioning radiation protection monitors. Petitioner incorporates herein the entire Boudrie DOL record in support of this contention. In addition, Petitioner will rely upon the testimony of Mr. Robarge and other employees or former employees at Plant Zion who are knowledgeable about these issues to prove this contention.

Additional bases for this contention are contained in the explanation sections of Contention 1, Contention 3 and Contention 10.

For each of the reasons set forth above, the NRC and the Applicant cannot meet the burden set forth under 10 C.F.R. § 50.92. In addition, this material further demonstrates why a finding of no significant hazards cannot be issued in this matter and why a stay should be entered preventing the July 24, 1998 decision of the NRC Staff from being implemented.

#### CONTENTION 18

Statement Required under 10 C.F.R. § 2.714(b)(2): No changes should be made to Applicant's license until the harassment and intimidation of employees is halted. See Applicant's Application, Attachment A.

Brief Explanation of Basis for Contention Required under 10 C.F.R. § 2.714(b)(2)(I) and the Concise Statement of Facts, Opinion, and References which Support Contention Required

under 10 C.F.R. § 2.714(b)(2)(ii): As set forth in the DOL case filed by Randy Robarge, current DOL cases pending before OSHA and the July 22, 1997 letter from Beach to Maiman, a “chilling effect” exists at Plant Zion which prevents the proper disclosure of safety related problems at that site. Until the Applicant can demonstrate that it has solved this “chilling effect” problem and has eliminated the root causes of employee intimidation, any change to Applicant’s license must be denied.

Additional bases for this contention are contained in the explanation sections of Contention 1 and Contention 3.

For each of the reasons set forth above, the NRC and the Applicant cannot meet the burden set forth under 10 C.F.R. § 50.92. In addition, this material further demonstrates why a finding of no significant hazards cannot be issued in this matter and why a stay should be entered preventing the July 24, 1998 decision of the NRC Staff from being implemented.

#### CONTENTION 19

Statement Required under 10 C.F.R. § 2.714(b)(2): The license amendments should be denied in their entirety because a loss of coolant accident (hereinafter “LOCA”) could result from the changes requested by Applicant. See Applicant’s Application, Attachment A.

Brief Explanation of Basis for Contention Required under 10 C.F.R. § 2.714(b)(2)(I) and the Concise Statement of Facts, Opinion, and References which Support Contention Required under 10 C.F.R. § 2.714(b)(2)(ii): Mr. Edwin Dienethal and other expert witnesses shall testify that the proposed amendments could increase the potential for a LOCA, or a lesser accident, to occur at Plant Zion. The combination of staffing changes such as the elimination of the cite vice president, the elimination of senior operators, the elimination of radiation protection supervisors,

and the use of only certified fuel handlers to perform functions on site or be present on site could result in a LOCA. Specifically, the absence of the types of personnel which would be eliminated or downgraded in Applicant's proposed amendments would result in the elimination of experienced professionals on site. In an unpredictable situation, this lack of experience could prove catastrophic to the public health and safety. The downgrading of the skill, knowledge, and experienced pool of talent on site in combination with the problems identified in Contentions 1 and 3 could reasonably result in a LOCA due to human error. This matter will be the subject of expert testimony by Mr. Dienethal and other witnesses.

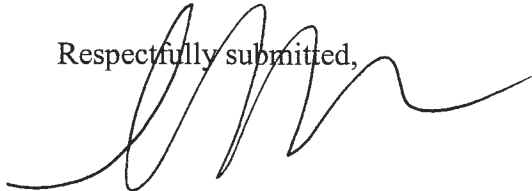
Additional bases for this contention are contained in the explanation sections of Contentions 1 through 18.

For each of the reasons set forth above, the NRC and the Applicant cannot meet the burden set forth under 10 C.F.R. § 50.92. In addition, this material further demonstrates why a finding of no significant hazards cannot be issued in this matter and why a stay should be entered preventing the July 24, 1998 decision of the NRC Staff from being implemented.

## CONCLUSION

For the foregoing reasons, Petitioners' request to intervene, and all of the contentions set forth above, should be admitted. Moreover, on the basis of the factual record set forth herein, Petitioner's request to stay the issuance of the No Significant Hazards Determination until a full and complete hearing on the above-referenced contentions should be granted.

Respectfully submitted,



Stephen M. Kohn  
Michael D. Kohn  
David K. Colapinto

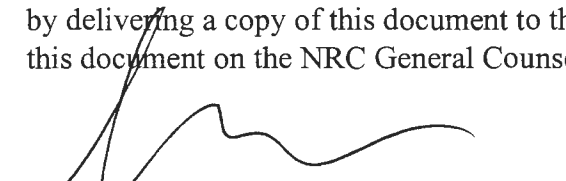
KOHN, KOHN & COLAPINTO, P.C.  
3233 P Street, N.W.  
Washington, D.C. 20007  
202-342-6980 (phone)  
202-342-6980 (fax)

Attorneys for Petitioners

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## CERTIFICATE OF SERVICE

I hereby certify that on August 18, 1998 a copy of this document was served in accordance with the service procedures set forth in Vol. 63 Federal Register No. 155, p. 43201 by delivering a copy of this document to the NRC Public Document Room and serving a copy of this document on the NRC General Counsel and the attorney for the licensee.

  
\_\_\_\_\_  
Stephen M. Kohn

340/petition.nsh

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

In the Matter of	)	
	)	Docket Nos. 50-295/304-LA
COMMONWEALTH EDISON COMPANY	)	
	)	
(Zion Nuclear Power Station,	)	
Units 1 and 2)	)	August 18, 1998
	)	

**EXHIBITS TO INTERVENER'S TO INTERVENE AND INITIAL  
STATEMENT OF CONTENTIONS AND REQUEST FOR STAY**

Stephen M. Kohn  
Michael D. Kohn  
David K. Colapinto  
KOHN, KOHN & COLAPINTO, P.C.  
3233 P Street, NW  
Washington, DC 20007  
Phone: (202) 342-6980  
Fax: (202) 342-6984

Attorneys for Petitioners

August 18, 1998

## INDEX OF EXHIBITS

1. Affidavit of Edwin D. Dienethal (July 31, 1998).
2. Affidavit of Randy D. Robarge (July 31, 1998).
3. Notices of Violation (NOV) and Enforcement Actions (EA) Resulting From Quality Assurance Breakdown.
4. Notices of Violation (NOV) and Enforcement Actions (EA) Resulting From Failure to Follow Procedures.
5. Redacted Excerpts of Deposition of Rodney Bauman from Robarge v. Commonwealth Edison, 98-ERA-2.
6. Redacted Excerpts of Deposition of Brent Robinson from Robarge v. Commonwealth Edison, 98-ERA-2.
7. Redacted Excerpts of Deposition of Ronald Schuster from Robarge v. Commonwealth Edison, 98-ERA-2.
8. Redacted Excerpts of Deposition of John C. Meyers from Robarge v. Commonwealth Edison, 98-ERA-2.
9. Redacted Excerpts of Hearing Transcript from Robarge v. Commonwealth Edison, 98-ERA-2.
10. Testimony of Allen Mosbaugh from Hearing Transcript for Robarge v. Commonwealth Edison, 98-ERA-2.
11. Redacted Excerpts of Hearing Transcript from Robarge v. Commonwealth Edison, 98-ERA-2.

# **EXHIBIT 1**



UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD  
Before Administrative Judges:

Thomas S. Moore, Chairman  
Dr. Jerry R. Kline  
Frederick J. Shon

_____	)	
In the Matter of	)	Docket Nos. 50-295/304-LA
	)	
COMMONWEALTH EDISON COMPANY	)	ASLBP No. 98-744-04-LA
	)	
(Zion Nuclear Power Station.	)	
Units 1 and 2)	)	July 31, 1998
	)	
_____	)	

**AFFIDAVIT OF EDWIN D. DIENETHAL**

Under the pains and penalties of perjury, I, Edwin D. Dienethal, hereby affirm pursuant to 28 USC § 1746 that the following information is true and correct:

1. In close proximity of Plant Zion, I own property, own a home and reside at the following address: 8354 47<sup>th</sup> Court, Kenosha, Wisconsin, 53142.
2. The distance between my home and the gate of Plant Zion is 10.2 miles driving and 8 ½ to 9 miles as the crow flies. It takes only 17 minutes and 23 seconds to drive to Plant Zion from my home in normal traffic conditions.
3. My wife and two children, ages 9 and 6 years, live with me at the above address.

My wife and I have lived at the above address since 1991.

4. The property value has an estimated fair market value of \$172,504 and the contents of the house are insured at over \$100,000. If it is revealed that the decommissioning of Plant Zion is not conforming to present rules, I believe that this would affect my ability to sell my property at the current market value.
5. My two children attend the Kenosha Montessori School only 12 miles from Plant Zion. My wife and I share duties driving and picking up my children from this school. My children play, along with other children from the community, in the Kenosha Association Soccer League once a week for six months of the year at Anderson Park, within 9 miles of Plant Zion. Both my wife and I attend all of these soccer games.
6. Plant Zion empties discharge into Lake Michigan. Each year, my family and I enjoy taking a couple of family outings to Lake Michigan. In these outings, my family and I enjoy boating, participating in water sports, and swimming in Lake Michigan. My family and I also fish in Lake Michigan and consume the fish caught from Lake Michigan.
7. My children spend at least six hours a day outside. Frequently this time is spent on a bike trail which runs to and through the town of Zion, Illinois, the town where Plant Zion is located, including directly in front of the Plant. In supervising

my children, my wife and I frequently take walks or bike upon the bike trail.

Other recreational activities my family and I enjoy is utilizing the Illinois Beach State Park. I also occasionally play golf at the golf course in Zion, Illinois.

8. All of my heating and air conditioning business is conducted within 50 miles of Plant Zion. I have customers in several local towns including Kenosha, Wisconsin, which is within 10 miles of Plant Zion. My supplier, Midway Supply, is located within 1 mile of Plant Zion. For the survival of my company, I will be conducting a large amount of business with Midway Supply which will require me to drive to Midway Supply 3 to 4 times each week. I am also required to travel most of the roads within 50 miles of Zion in order to conduct my business. Many of the roads I use for my business are the same roads which Plant Zion uses to transport plant waste to Hamford, Washington. This plant waste is also transported through the streets of Zion, Illinois.
9. Three or four times a week my family and I drive within 1 to ½ miles of Plant Zion to downtown Zion, Illinois, to get gasoline, go shopping, visit the post office, or attend movies. My family and I periodically eat at restaurants or purchase food at the grocery store in Zion. Also while in Zion, my family and I occasionally visit the Power House, a public education center, which is less than 1 *block* away from Plant Zion.
10. The safety of the food and water my family and I consume are continuously

threatened by Plant Zion. My family and I purchase produce grown on local farms located within 10 miles of Plant Zion. The water my family and I drink is from Lake Michigan. Plant Zion empties into Lake Michigan. Even the air my family and I breath is threatened by the possible chance of a fire presenting the potential for release of particles into the atmosphere from the plant.

11. My family and I are year-round residents of Kenosha, Wisconsin. All my family activities, business activities, and daily activities are completed within 50 miles of Plant Zion.
12. My experience at Plant Zion began in December 1989. My last day on which I worked at Plant Zion was April 15, 1998, and the last day on which I conducted business on site at Plant Zion was May 29, 1998. From December 1989 to August 1995, I held the position of Mechanical Maintenance Supervisor, supervising up to 50 in-house mechanical and contract personnel. I was directly responsible for personnel safety in the Mechanical Maintenance Department, and I ensured that Nuclear Regulatory Commission and OSHA safety rules and regulations were followed by those under my supervision. As a supervisor I also corrected maintenance deficiencies. From August 1995 to April 1998, I was a Mechanical Maintenance Work Analyst. At this position, I identified and analyzed corrective and preventive maintenance on all equipment for many departments at Plant Zion, and I developed and wrote maintenance procedures in the field of Heating, Ventilation, and Air Conditioning (HVAC). I was also the Lead Work Analyst to

maintain the Reactor Coolant Pumps.

13. During my tenure at Plant Zion, I participated in numerous Commonwealth Edison training programs to ensure that I was performing work in the safest manner possible. While employed by Commonwealth Edison, I received numerous certifications and took part in the following training sessions: Nuclear General Employee Training (NGET), First Line Supervisor (FLS), and Human Performance Evaluation System (HPES). I also earned EPA certification in handling refrigerants.
14. Before working at Plant Zion, I was employed by Cosmopolitan Realty in Chicago, Illinois from September 1985 to November 1989. I held the position of Assistant Engineer for Commercial and Residential Building Maintenance, and I directed corrective and preventive maintenance on all facility equipment and structures.
15. From 1984 to 1985, I worked in the Research and Development Division at Y.K.K. Zipper in Northbrook, Illinois where I designed, modified, and set-up clothing manufacturing industry equipment. In addition to these responsibilities, I trained personnel in the safe operation of high speed machinery. I also identified and modified any safety problems with the equipment and wrote safety guidelines for machinery operations.

16. From February 1976 to August 1984, I was enlisted in the United States Navy. I enlisted as an Aviation Structural Mechanic/Hydraulics and trained to become an Aviation Structural Mechanic/Hydraulics Specialist. Throughout my Naval career I became certified in the performance of critical maintenance processes on military- and civilian-type aircraft. I held qualifications within various fields of aviation maintenance, and I was knowledgeable of the rules and regulations for the military specifications (mil-spec) of aviation. From 1980 to 1982, I was the Safety Petty Officer for Squadron H-C9, NAS North Island. At the end of my Naval career, I held the position of Supervisor 2nd Class in the division of the Hydraulics Shop, Aviation Intermediate Maintenance Depot (A.I.M.D.) at NAS North Island.
17. From 1986 to 1988, I enrolled in numerous schools to gain qualifications in HVAC. For example, I enrolled in the National Association of Power Engineers School in Elk Grove Village, Illinois where I concentrated on Basic and Advanced Steam Plant Operations, Electricity and Refrigeration, and Water Treatment. In 1988, I attended the Coyne American Institute in Chicago, Illinois where I earned HVAC certification and became qualified to troubleshoot and repair HVAC systems.
18. Given my experience of working at Plant Zion for 9 years and my first-hand knowledge of Plant Zion operations, I am a direct witness of health and safety concerns which will impact the local environment as well as the health and safety

of myself, my wife and children, employees at Plant Zion, and the community.

19. I have specific concerns about the injuries that could result to my family and the local communities that derive from the proposed amendment by Commonwealth Edison. Based upon my background in nuclear energy and my experience in working at Plant Zion for 9 years, I believe that the proposed amendment presents many threats to the public health and safety, harm to the environment, and harm to the health of employees at Plant Zion. These injuries would result from the structural and functional changes in Plant Zion proposed by the amendment or if any mishap should occur while Plant Zion is functioning under the proposed changes of the amendment.
20. As my contentions will demonstrate, if Plant Zion functions under the proposed amendments, the potential injuries to me and my family, Plant Zion workers, the community, and the local environment include, but are not limited to: 1. LOCA (Lost of Coolant Accident), 2. radiological concerns, 3. unsafe levels of radiation for the employees at the plant and the general public, 4. undetectable radiation contamination by employees, 5. contamination of the local community and the environment, 6. increase risk of accident at Plant Zion, and 7. contamination of Lake Michigan. After reading the affidavit of Randy Robarge, other injuries appear eminent which include the increased potential of failing to detect radiation in adequate time and the increase risk of the plant functioning unsafely and outside NRC regulations.

21. My family and I, the community, plant workers, and the local environment will be directly affected by these potential injuries by the proposed amendment.

Working directly and indirectly with current and former employees of Plant Zion,

I am provided with additional relevant materials concerning the adverse impact

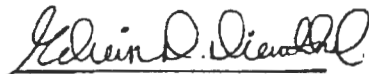
that the proposed amendments will have on the health and safety of myself, my

wife and my children, plant workers, and the community. Individuals with whom

I am working include, but are not limited to, Mr. Randy Robarge.

22. I have formed the Committee for Safety at Plant Zion (CSPZ) with Mr. Robarge to jointly work to ensure that the operation and decommissioning of Plant Zion does not threaten the health and safety of the public. As co-director of CSPZ, I am capable of obtaining access to relevant materials to ensure that the public welfare is protected in light of the Plant Zion decommissioning. In addition, I am in the unique position to intervene because of this newly formed committee and my status as co-director.

**THE AFFILIANT SAYETH FURTHER NOT.**



Edwin D. Dienethal

7-30-98

Date

Exhibit 1, page 8 of 8



## **EXHIBIT 2**

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD  
Before Administrative Judges:

Thomas S. Moore, Chairman  
Dr. Jerry R. Kline  
Frederick J. Shon

In the Matter of	)	Docket Nos. 50-295/304-LA
	)	
COMMONWEALTH EDISON COMPANY	)	ASLBP No. 98-744-04-LA
	)	
(Zion Nuclear Power Station,	)	
Units 1 and 2)	)	July 31, 1998
	)	
	)	

**AFFIDAVIT OF RANDY D. ROBARGE**

Under the pains and penalties of perjury, I, Randy D. Robarge, hereby affirm pursuant to 28 USC § 1746 that the following information is true and correct:

1. I own property, own a home, and reside year-round at the following address: 8800 Third Avenue, Pleasant Prairie, Wisconsin, 53158.
2. The driving distance between my home and the gate of Plant Zion is 8.1 miles and it takes only 13 minutes and 22 seconds to drive from my home to Plant Zion under normal driving conditions.
3. My wife lives with me at the above address. We have lived at this address for 8 to

9 years.

4. In 1997, I filed a Whistleblower retaliation claim against Commonwealth Edison Co. under § 211 of the Energy Reorganization Act (ERA), the outcome of which ended in a settlement agreement. See Robarge v. Commonwealth Edison Co., 98 ERA 2 (1997). Upon entering into this settlement in May 1998, I was required to return all documents provided to me by Commonwealth Edison Co. in discovery.
5. As part of my Department of Labor (DOL) case arising from my claim under § 211 of the ERA, a hearing was held from May 18, 1998 to May 22, 1998. At the hearing, witnesses gave sworn testimony confirming willful violations and the breakdown of the Quality Assurance (QA) program. The hearing transcript and record are publically available from the DOL.
6. As part of my DOL case, I conducted discovery and personally sat in on the depositions of a number of witnesses. During said depositions, witnesses confirmed the existence of "PIF wars" concerning the filing of Problem Identification Forms (PIF) by employees. PIFs are used to report nuclear safety concerns at Plant Zion. ("PIF wars" is a colloquial expression at Plant Zion which, according to the expert testimony of Mr. Allen Mosbaugh, demonstrates a breakdown of the QA program. Mr. Mosbaugh's testimony is publically available from the DOL. At the hearing of my case, many other witnesses also confirmed the "PIF wars" concept and the presence of a "chilling effect," an implication of "PIF wars" and other practices by management to deter the filing of PIFs, at Plant

Zion.)

7. During the discovery phase of my DOL case, witnesses were questioned on intentional violations. These witnesses admitted that supervisors at Plant Zion intentionally violated procedures and that it was widely known at Plant Zion that supervisors intentionally and willfully violated procedures. At the hearing, these witnesses and others confirmed the acts of willful violation of procedures, and confirmed that management was aware of said acts of willful violation of procedures. These witnesses and others at the hearing also identified other supervisors that were identified in depositions as individuals who committed wilful violations of procedures and safety regulations.
8. During the discovery phase of my DOL case, I was required by Commonwealth Edison Co. to execute a protective order from disclosing in this or any other proceedings certain information which I believe is critical to public health and safety and the merits of Mr. Edwin Dienethal's petition for intervention. It is in the public interest that the restriction be lifted as it relates to any filings in this proceeding.
9. I contend that it is a potential environmental hazard, threat to public health and safety and threat to the health of plant workers for Plant Zion to eliminate various shift positions of Radiation Protection Technician ("RPT") on site at the plant. A RPT is needed on around-the-clock (24 hour) shifts to quickly assess and solve

potential radiation problems. RPTs verify radiation dose rates and determine if persons working in radioactive areas may walk off the site without danger of contaminating other persons or areas. Without the presence of RPTs on around-the-clock shifts, contaminated personnel may dangerously spread radiation throughout the plant and surrounding area.

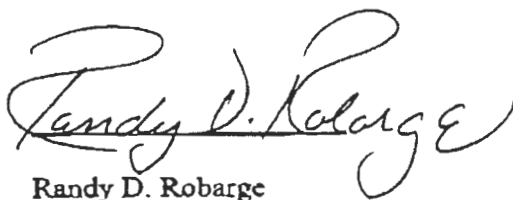
10. I contend that it is a potential environmental hazard, threat to public health and safety and threat to the health of plant workers for Plant Zion to eliminate the position of Full-Time Operator. The Full-Time Operator quickly assesses and deals with technical system problems that arise within the plant. Such a position needs to remain open full time to ensure safety of the plant, the public and environment.
11. I contend that it is a potential environmental hazard, threat to public health and safety and threat to the health of plant workers for Plant Zion to eliminate some of the Radiation Protection Monitors on active systems. These monitors quantify the amount of radiation released into the area and quantify air quality radiation levels. The monitors need to be retained or replaced with updated monitors. The monitors or upgraded monitors also need to be maintained and serviced to assure quality detection in accordance with nuclear safety regulations and accepted safety standards. Without these monitors, improper levels of radiation may go undetected and radiation contamination may be released to the general public, plant workers, and the local environment, placing the health and safety of the community, plant workers, and their families in jeopardy.

12. My experience at Plant Zion spans from March 1972 to June 1998. From December 1989 to June 1998, I was a Radiation Protection Supervisor. That position included: supervising station and contractor radiation protection technicians; developing and implementing technician procedures; contamination control; shielding installation to reduce radiation exposure, regulating radiation dose levels for employees; overviewing station activities in the field; developing and maintaining radiation protection instruments; assisting with the health physics technical groups; and ensuring required surveillances and outage work preparation were completed.
13. From August 1989 to December 1989 and September 1988 to November 1988, I was the Health Physics Supervisor at Plant Zion. Prior to that, I was a Senior Health Physics Technician for Baltimore Gas & Electric's Calvert Cliffs Nuclear Station from March 1989 to May 1989; for Consumers Power Company's Palisades Nuclear Station from December 1987 to January 1988 and October 1987 to November 1987; for Commonwealth Edison Company's Braidwood Nuclear Station from November 1987 to December 1987; for Commonwealth Edison Company's Plant Zion from August 1986 to February 1987, July 1985 to January 1986, April 1985 to July 1985, and June 1984 to October 1984; for Wisconsin Public Service Company's Kewaunee Nuclear Station from February 1986 to April 1986; and for Florida Power & Light Company's Turkey Point Nuclear Station from March 1984 to June 1984. I was also a Junior Health Physics

Technician at Plant Zion from August 1983 to November 1983 and February 1982 to May 1983. Additionally, I was a Health Physics Liaison to Commonwealth Edison Company's LaSalle Nuclear Station from February 1988 to August 1988, and I was a Health Physics Advisor at Commonwealth Edison Company's Byron Nuclear Station from July 1985 to August 1985.

14. I was a Site Coordinator at Commonwealth Edison Company's Byron Nuclear Station from December 1988 to March 1989; at Commonwealth Edison Company's Plant Zion from November 1988 to December 1988; at Florida Power & Light Company's Turkey Point Nuclear Station from February 1987 to October 1987; and at Commonwealth Edison Company's Dresden Nuclear Station from October 1984 to March 1985.
15. I was also an Operating Engineer with a private company in Illinois from September 1973 to January 1982. Prior to that, I was an X-Ray Technician at Plant Zion from March 1972 to August 1973.

**THE AFFIANT SAYETH FURTHER NOT.**

  
Randy D. Robarge

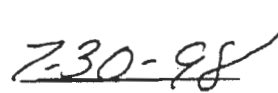
  
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Exhibit 2, page 6 of 6

## **EXHIBIT 3**



**NOTICES OF VIOLATION (NOV) AND ENFORCEMENT ACTIONS (EA)  
RESULTING FROM QUALITY ASSURANCE BREAKDOWN**

1. NOV 295(304)/95006-016, violation of Technical Specification (TS) 6.2
2. NOV 295(304)/96017-04, violation of 10CFR50 Appendix B, Criterion XVI
3. NOV 295(304)/96017-03, violation of TS 3.15.2.c
4. EA 95-283, LEVEL III violation, \$50,000 CIVIL PENALTY
5. NOV 295(304)/96017-01, violation of TS 6.2.1.a
6. NOV 295(304)/96014-03, violation of TS 3.15.2.c
7. NOV 295(304)/96014-02, violation of TS 6.2.1.a
8. NOV 295(304)/96017-03, violation TS 3.15.2.c
9. NOV 295(304)/95014-I, violation of TS 4.4.2
10. NOV 295(304)/95014-II, violation of 4.15.1.b.3
11. NOV 295(304)/95014-III, violation of TS 4.3.1.b.4.a.6
12. NOV 295(304)/94014-a, violation of TS 3.14
13. NOV 295(304)/94014-c, violation of TS 4.10.1.a.6
14. NOV 295(304)/94019-04, violation of TS 3.9.3a
15. NOV 295(304)/94020-1, violation of 10CFR50.59(2)(b)(I) and UFSAR § 6.3.2.2.5 Table 6.3-11
16. NOV 295(304)/93020-01 a/b, violation of TS 6.2.1 and 3.15.1
17. NOV 295(304)/95016-01, violation of TS 4.10.1.a.2
18. NOV 295(304)/94021-08a, violation of TS 6.1.15
19. NOV 295(304)/94021-05
20. NOV 295(304)/96008-09, violation of TS 6.2.2.a
21. NOV 295(304)/96006-01, violation of TS 3.0.4

22. NOV 295(304)/97002-10, violation of TS 6.2.2.b
23. NOV 295(304)/96017-01, violation of TS 6.2.1.a
24. NOV 295(304)/96016-03, violation of TS 3.1.3.c
25. NOV 295(304)/96016-04, violation of TS 3.14
26. NOV 295(304)/96005-03, violation of TS 3.0.4
27. NOV 295(304)/95018-04, violation of TS 6.2
28. NOV 295(304)/95014-I, violation of TS 4.4.2
29. NOV 295(304)/95008-02 b,c
30. NOV 295(304)/95008-03, violation of TS 3.14.1.a
31. NOV 295(304)/94021-08a, violation of TS 6.1.15; 10CFR50 Appendix B, Criterion XVI
32. NOV 295(304)/94020-01, violation of 10CFR50.59(2)(b)(1)
33. NOV 295(304)/94019-04, violation of TS 3.9.3a
34. NOV 295(304)/94014c, violation of TS 4.10.1.a.6
35. NOV 295(304)/92023
36. NOV 295(304)/93020-01 a, b, violation of TS 6.2.1
37. NOV 295(304)/97020-01, violation of TS 6.2.1
38. NOV 295(304)/97020-03, 04, violation of TS 6.2.1
39. NOV 295(304)/97020-05, violation of TS 3.14
40. NOV 295(304)/97003-01, violation of TS 3.13.2.a.1
41. NOV 295(304)/97013, violation of TS 6.2.1.i
42. NOV 295(304)/97013-02, violation of TS 6.2.1.i
43. NOV 295(304)/94010-I.a, violation of TS 3.7.2.a and 3.7.2.e; CIVIL PENALTY

ASSESSED

44. NOV 295(304)/94002-01, violation of 10CFR50 Appendix B
45. NOV 295(304)/97009-01, violation of TS 6.2.2.a
46. NOV 295(304)/97008-03, violation of 10CFR50.54(T)
47. NOV 295(304)/97012-01, violation of TS 6.2.1.a
48. NOV 295(304)/97020-05, violation of TS 3.14
49. NOV 295(304)/97019-02, violation of TS 6.2.1.a
50. NOV 295(304)/97018-05, violation of 10CFR50 Appendix B, Criterion XV
51. NOV 295(304)/96020-03, violation of TS 6.2.1.a
52. NOV 295(304)/97002-10, violation of TS 6.2.2.b
53. NOV 295(304)/94014-b, violation of 10CFR50.73(a)(2)(I)(b)

## **EXHIBIT 4**

**NOTICES OF VIOLATION (NOV) AND ENFORCEMENT ACTIONS (EA)  
RESULTING FROM FAILURE TO FOLLOW PROCEDURES**

1. NOV 295(304)/96005-03, violation of Technical Specification (TS) 3.0.4 because TS 3.7.2 was not met
2. NOV 295(304)/96021-05, 06, violation of TS 6.2.2.a
3. NOV 295(304)/96008-09, violation of TS 6.2.2.a
4. NOV 295(304)/95023-09, violation of 10CFR50
5. NOV 295(304)/95014-I, violation of TS 4.4.2
6. NOV 295(304)/94008-01, WILLFUL violation of TS 6.2.2.a
7. NOV Investigation Report 3-92-008R, violation of TS 6.2.2.a
8. EA 95-283, LEVEL III violation, \$50,000 CIVIL PENALTY
9. NOV 295(304)/95016-04, violation of TS 6.2.2
10. NOV 295(304)/93014-I.a.b, LEVEL III VIOLATION, \$50,000 CIVIL PENALTY, violation of 10CFR50.59, UFSAR § 9.10.2
11. NOV 295(304)/97002-07, violation of 10CFR50 Appendix, Criterion B
12. NOV 295(304)/97002-10, violation of TS 6.2.2.b
13. NOV 295(304)/96006-04, violation of TS 6.2
14. NOV 295(304)/96020-03, violation of TS 6.2.1.a
15. NOV 295(304)/96016-05 a,b, violation of TS 6.2.6.a
16. NOV 295(304)/96014-03, violation of TS 3.15.2.c
17. NOV 295(304)/96006-10, violation of TS 6.2.2.b.2
18. NOV 295(304)/96005-03, violation of TS 3.0.4
19. NOV 295(304)/95016-04, violation of TS 6.2.2
20. NOV 295(304)/95014-I, violation of TS 4.4.2

21. NOV 295(304)/95008-02a, violation of TS 6.2
22. NOV 295(304)/95006-1a, violation of TS 6.2
23. NOV 295(304)/95003-01a, violation of TS 6.2
24. NOV 295(304)/97020-01, violation of TS 6.2.1
25. NOV 295(304)/97020-03, 04, violation of TS 6.2.1
26. NOV 295(304)/97020-05, violation of TS 3.14
27. NOV 295(304)/97019-04, violation of TS 6.2.1.a

## **EXHIBIT 5**

STATE OF ILLINOIS )  
 ) SS:  
COUNTY OF L A K E )

**ORIGINAL**

BEFORE THE US DEPARTMENT OF LABOR  
OFFICE OF THE ADMINISTRATIVE LAW JUDGES

RANDY ROBARGE, )  
 )  
Plaintiff, )  
 )  
vs. ) 98 ER 2  
 )  
COMMONWEALTH EDISON, )  
 )  
Defendant. )  
\_\_\_\_\_ )

The deposition of RODNEY BAUMAN,  
called by the Plaintiff, for examination, pursuant to  
notice and agreement, and pursuant to the provisions  
of the Illinois Code of Civil Procedure and the Rules  
of the Supreme Court pertaining to the taking of  
depositions for the purpose of discovery, taken  
before Annamarie Block, CSR, a Notary Public within  
and for the County of Lake and State of Illinois, at  
Commonwealth Edison Powerhouse, Shiloh Road,  
Illinois, on the 17th day of December, 1997, A.D., at  
the hour of 9:00 a.m.



A P P E A R A N C E S

KOHN, KOHN & COLAPINTO, LTD.  
3233 P Street, Northwest  
Washington, DC 20007-2756  
BY: Mr. Stephen M. Kohn,

appeared on behalf of Plaintiff;

SIDLEY & AUSTIN  
One First National Plaza  
Chicago, Illinois 60603  
BY: Mr. David Goldberg,

appeared on behalf of Defendant.

DEPOSITION OF RODNEY BAUMAN

EXAMINATION

PAGES

By Mr. Kohn

3 - 38

(Witness sworn.)

RODNEY BAUMAN,

the deponent herein, being first duly sworn, deposeth  
and saith as follows:

E X A M I N A T I O N

BY MR. KOHN:

Q Would you please state your name and  
address for the record.

A Rodney Bauman, 7954 46th Avenue, Kenosha,  
Wisconsin.

Q My name is Stephen Kohn. I'm the attorney  
for Mr. Robarge. Thank you for coming today.  
Are you aware that this is a proceeding under the  
Energy Reorganization Act?

A No. I'm not sure what that is.

Q It's a proceeding under the laws that  
govern atomic energy and those laws -- did anyone  
tell you that those laws protect any witness to any  
such proceedings from any form of harassment or  
retaliation for providing testimony?

A No.

Q Is there anything that would prevent you  
from telling the complete truth today?

A No.

21           Q     And how long have you worked at  
22           Commonwealth Edison?

23           A     Just under six years.

24           Q     In terms of being a health physicist, do

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Exhibit 5, page 4 of 9

12           Q     Have you ever heard of a concept of PIF  
13 wars?

14           A     Yes.

15           Q     To you what does that mean?

16           A     It means if somebody PIF's our department,  
17 we PIF them back. If we PIF somebody else, they PIF  
18 us back to defend; because a PIF, by the nature of  
19 it, kind of sounds like blame is being set upon a  
20 certain party, so some people feel they have to  
21 defend themselves by initiating a PIT themselves on  
22 the person who PIFF'd them just because of the nature  
23 of the first assigning blame.

24           Q     Can a PIF result in a person being

9 Q Did you ever -- okay. Have you ever heard  
10 of an employee named [REDACTED]

11 A Yes.

12 Q And does he have a nickname?

13 A Yes.

14 Q What do people call him?

15 A [REDACTED]

16 Q Does he object to that name?

17 A No.

18 Q And just out of curiosity, at work do  
19 people generally call him [REDACTED] or generally call  
20 him [REDACTED]

21 A [REDACTED]

22 Q And did he have a reputation concerning  
23 adherence to procedures?

24 MR. GOLDBERG: Objection; calls for

1 speculation. To the extent you can answer the  
2 question, you may.

3 BY THE WITNESS:

4 A Yes, he has a reputation for generally  
5 disregarding procedures.

1           A     It was a Sunday when the Packers were  
2     playing the Bears. That's the only one I know of.

3           Q     Do you know who won the game, do you  
4     remember?

5                     MR. GOLDBERG: Objection; irrelevant.

6     BY THE WITNESS:

7           A     I don't recall.

8     BY MR. KOHN:

9           Q     Do you remember what season that would have  
10    been? Was that a year that either the Packers or  
11    Bears -- I'm just trying to get a time.

12          A     The last season. The season in which the  
13    Packers won the Super Bowl.

14          Q     Okay. Do you remember -- Strike that.

15                     Now, are aware that -- have you ever  
16    -- are there procedures that you are familiar with  
17    for dealing with radiation protection issues?

18          A     Yes.

19          Q     In 1996 how would you assess the state of  
20    those procedures?

21                     MR. GOLDBERG: Objection; vague, ambiguous.

22                     MR. KOHN: I'll break it up.

23    ~~BY~~ MR. KOHN:

24          Q     Were some of the procedures out of date?

1 A Yes.

2 MR. GOLDBERG: Objection to the extent it  
3 calls for a legal conclusion.

4 BY MR. KOHN:

5 Q Were some of the procedures difficult to  
6 follow?

7 A Yes.

8 Q And were -- did some of the procedures  
9 reference you to instrumentation which no longer  
10 existed on site?

11 A Yes.

12 Q What are postings?

13 A Postings are a requirement of regulation to  
14 inform the workers of radiological conditions.

15 Q In 1996 what was your assessment of the  
16 status of the postings of the plant?

17 A Our postings in 1996 were substandard.

18 Q And what about the radiation monitors in  
19 the station in 1996, what was your assessment of  
20 those?

21 A Also substandard.

22 MR. KOHN: Nothing further.

23 MR. GOLDBERG: Nothing.

24 AND FURTHER DEPONENT SAITH NOT



## **EXHIBIT 6**

STATE OF ILLINOIS     )  
                              ) SS:  
COUNTY OF L A K E     )

**ORIGINAL**

BEFORE THE UNITED STATES DEPARTMENT OF LABOR  
OFFICE OF ADMINISTRATIVE LAW JUDGES

RANDY D. ROBARGE,                     )  
  )  
                  Complainant,        )  
  )  
              vs.                        ) Case No. 98-ERA-2  
  )  
COMMONWEALTH EDISON,                )  
  )  
                  Respondent.         )  
\_\_\_\_\_  
  )

The deposition of BRENT ROBINSON  
called by the complainant, Randy D. Robarge, for  
examination, pursuant to notice, and pursuant to  
the provisions of the Illinois Code of Civil  
Procedure and the Rules of the Supreme Court  
pertaining to the taking of depositions for the  
purpose of discovery, taken before Debra Lynn  
Schultz, CSR, a Notary Public within and for the  
County of Lake and State of Illinois, at 9 North  
County Street, Waukegan, Illinois, on the 16th day  
of December, 1997, A.D., at the hour of 5:00  
o'clock p.m.

1 A. I believe so.

2 Q. Have you ever heard of an employee named

3 [REDACTED]

4 A. Yes.

5 Q. And does he have a nickname at work?

6 A. Yes.

7 Q. And what is that nickname?

8 A. [REDACTED]

9 Q. Was there a time when he was a supervisor  
10 in the radiation protection department?

11 A. Yes.

12 Q. About when was that?

13 A. I don't really recall.

14 Q. Was it when you were the lead supervisor?

15 A. No.

16 Q. He was not then?

17 A. No.

18 Q. Did he work in that department when you  
19 were the lead?

20 A. Yes.

21 Q. What did he do?

22 A. He was a decon supervisor, which is a  
23 different position.

24 Q. Did Mr. [REDACTED] have any type of

1 reputation concerning adherence to procedures at  
2 the plant?

3 MR. GOLDBERG: That you are aware of.

4 BY MR. KOHN:

5 Q. Yeah.

6 A. Yes.

7 Q. And what was that reputation?

8 A. He didn't reference procedures a lot, and  
9 that would be what I would say.

10 Q. And did that cause any problems between  
11 him and management, to the best of your knowledge?

12 A. I don't recall any issues that came up  
13 that were significant that I can recall.  
14 -

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Exhibit 6, page 3 of 4

12 BY MR. KOHN:

13 Q. Have you ever heard of a concept of PIF  
14 wars?

15 A. Yes.

16 Q. What does that mean?

17 A. Some people take PIFs defensively. A PIF  
18 is supposed to bring out some problem that's -- and  
19 it sometimes has been used, in some cases heavy  
20 handedly, if you didn't do something I wanted you  
21 to do, I will write a PIF on you, and that can --  
22 and that person says keep yourself clean, or I will  
23 write a PIF on you. So it ends up people  
24 exchanging PIFs.

## **EXHIBIT 7**

3 DEC 1997

U.S. DEPARTMENT OF LABOR  
OFFICE OF THE MINISTRATIVE LAW JUDGES

RANDY ROBARGE,

Plaintiff,

vs.

COMMONWEALTH EDISON,

Defendant.

No. 98 ERA 2

The discovery deposition of RONALD SCHUSTER, called by the Plaintiff for examination, pursuant to notice, and pursuant to the provisions of the Illinois Code of Civil Procedure and the Rules of the Supreme Court pertaining to the taking of depositions for the purpose of discovery, taken before Jennifer E. Baker, CSR, a Notary Public within and for the County of Lake and State of Illinois, at The Power House, 100 Shiloh Boulevard, Zion, Illinois, on the 18th day of December, 1997, A.D., at the hour of 9:00 a.m.

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BY MR. KOEN:

Q. And have you heard of a term at the site called PIF wars?

A. Absolutely.

Q. And what's your understanding of what that term means at the Zion site?

A. That term, to me, means tit for tat. Means one department writes on one department making an allegation or a statement, and the other department will answer back or write another PIF on that department.

Q. Did you ever think -- okay. And can PIF wars happen inside of a department, two people, say you have a personality conflict?

A. Yes.

Q. Has the site management taken any steps to address the personality issues that might or the



1 personality conflicts that might give rise to PIF  
2 wars? Have they counseled people about it or  
3 things like that, do you know?  
4 A. Yes, I do.  
5 Q. Okay. How has that happened or when?  
6 A. My own personal experience would be to  
7 ask the individual is this really what you want to  
8 say, is this the facts, or are you putting emotions  
9 down on the PIF. As managers, we've been  
10 instructed to ensure that facts only make it to the  
11 PIF process. Don't be emotional about what you're  
12 writing.

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BY MR. KOHN:

Q. Have you ever heard of an employee by the name of [REDACTED] ?

A. Absolutely.

Q. And what is his in this case name?

A. [REDACTED]

Q. And does he object to being called [REDACTED]

A. Never.

Q. And what was Mr. [REDACTED] -- were you aware that he had a reputation concerning adherence to procedure?

A. Yes.

Q. And what was that reputation?

MR. GOLDBERG: You understand the question?

1 THE WITNESS: Can you clarify it?  
2 MR. KOHN: Sure.  
3 BY MR. KOHN:  
4 Q. Did anyone -- did you ever learn either  
5 through -- did you have an opportunity to learn  
6 through either direct observation or through  
7 hearsay, just people talking, about [REDACTED]  
8 operating modus operandi procedures and adherence  
9 to procedures?  
10 MR. GOLDBERG: Objection. The question  
11 is vague and ambiguous.  
12 BY THE WITNESS:  
13 A. Yes, I can say that I have physically  
14 witnessed [REDACTED] operating outside of the  
15 bounds.  
16 BY MR. KOHN:  
17 Q. Okay. And were others aware -- within  
18 the department aware that he would operate outside  
19 of bounds from time to time?  
20 MR. GOLDBERG: Objection. Calls for  
21 speculation.  
22 BY MR. KOHN:  
23 Q. To the best of your knowledge?  
24 MR. GOLDBERG: To the best of your

1 knowledge.  
2 BY THE WITNESS:  
3 A. To the best of my knowledge, yes.  
4 BY MR. KOHN:  
5 Q. And now to follow it up with that last  
6 question, would it be fair to say that his  
7 reputation among the supervisors was one of someone  
8 who did not strictly adhere to procedures?  
9 MR. GOLDBERG: Objection. Calls for  
10 speculation.  
11 BY THE WITNESS:  
12 A. Yes.  
13 BY MR. KOHN:  
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1 A. Yes.

2 Q. Tell me about your assessment of the  
3 condition of those procedures in 1996.

4 MR. GOLDBERG: Objection. Vague and  
5 ambiguous. The condition of the procedures?  
6 Mr. Kohn, you mean physically how they were  
7 situated?

8 MR. KOHN: No, I am talking about the  
9 content.

10 MR. GOLDBERG: He just testified that he  
11 never looked at them in 1996, so how are you asking  
12 him to assess the condition of them?

13 MR. KOHN: Well, let me just clarify  
14 logical that.

15 THE WITNESS: Uh-huh.

16 BY MR. KOHN:

17 Q. In 1996, had you had an opportunity to  
18 review the ZAP or ZRP procedures which were  
19 applicable to the Radiation Protection Department?

20 A. Absolutely.

21 Q. Okay. And when you reviewed them, were  
22 you able to form an opinion as to the condition?  
23 I'm not talking about whether a page was torn. I'm  
24 talking about the content of those procedures.

1           A.     Yes.

2           Q.     Okay.  And what was your assessment as to  
3 the content of those procedures?

4           MR. GOLDBERG:  Objection.  Vague and  
5 ambiguous.

6     BY THE WITNESS:

7           A.     Some of the procedures were in a great  
8 state of disrepair, needed much work.  Some were  
9 middle of the road, gave pretty good guidance to  
10 individuals and technicians.  And some were in  
11 great shape.

12     BY MR. KOHN:

13          Q.     Okay.  Did some of the procedures  
14 reference instruments that no longer existed  
15 on-site?

16          A.     That is a true statement.

17          Q.     And were some of the procedures  
18 confusing?

19          MR. GOLDBERG:  Objection.  Vague and  
20 ambiguous.  Calls for speculation.

21     BY THE WITNESS:

22          A.     Yes.

23     BY MR. KOHN:

24          Q.     Now, what's the relationship between --

1 if you're to do a job, should you always check  
2 both -- and you needed reference to a procedure,  
3 would it be appropriate, should you always look at  
4 the ZAP and the ZRP procedures, or would just be  
5 going to one or the other sufficient?

6 A. You need to clarify the question.

7 Q. Okay. What's the relationship between  
8 the ZAP and the ZRP procedures?

9 A. A ZAP is a Zion Administrative  
10 Procedure. It is all encompassing. It covers  
11 everybody here on-site. Every Commonwealth Edison  
12 employee, contractor, that works within the realm  
13 of this station is held responsible for Zion  
14 Administrative Procedures. ZRPs are Zion Radiation  
15 Protection Procedures, and those will affect and  
16 should be adhered to by members of the Radiation  
17 Protection Department here at Zion Station and  
18 contractors that work for them.

19 Q. Okay. So as I understand your answer,  
20 the ZAP, the Radiation Protection Department, as  
21 all other departments, would have to conform their  
22 work to those requirements?

23 MR. GOLDBERG: Objection. That's not a  
24 question, Mr. Kohn. Testimony speaks for itself.

1                   Mr. Schuster, you don't need to  
2 respond to Mr. Kohn's testimony.

3                   MR. KOHN: Sure.

4 BY MR. KOHN:

5                   Q. Is that a correct assessment?

6                   A. Yes.

7                   Q. From time to time, would there be a  
8 conflict between the two?

9                   A. Yes.

10                  Q. Now, the testimony you gave about some of  
11 the -- you know -- some the problems with the  
12 procedures, was that true of both the ZRP and the  
13 ZAP Procedures or just mostly the ZRP?

14                  A. Need to clarify.

15                  Q. In other words, you testified earlier  
16 that there was a -- that some of the procedures  
17 were in a state of disrepair. Was that -- did that  
18 apply to both ZAP and ZRP Procedures?

19                  A. Yes.

20                  Q. Okay. Now, in or about October of 1996,  
21 did you -- did you supervisor or assign an employee  
22 to perform a study of radiation work permits and  
23 whether the RWPs which had been done or some of  
24 them which had been done in 1996, how they matched



1 up with the ZRP procedures?

2 A. You need to clarify it.

3 Q. Okay. You know what an RWP is, correct?

4 A. Yes, I do. It's a Radiation Work Permit.

5 Q. And when an RWP is written, as I

6 understand it, it's supposed to conform to the

7 requirements and the procedures, the work as set

8 forth there?

9 MR. GOLDBERG: Objection. There's no

10 question yet.

11 BY MR. KOHN:

12 Q. Correct?

13 A. That is a true statement.

14 Q. And did there come a time in 1996 in

15 which an employee, not you but another employee, in

16 the department looked at, compared RWPs with the

17 procedural requirements in the ZRP?

18 A. Yes.

19 Q. Okay. And who was that employee?

20 A. I can't recollect that name at this

21 time.

22 Q. Okay. And when that was -- and did that

23 employee inform you of the results of the study

24 that he made?

1 MR. GOLDBERG: Objection. Calls for  
2 speculation.

3 If you recall, Mr. Schuster.

4 THE WITNESS: I need a break.

5 (Brief recess taken.)

6 BY MR. KOHN:

7 Q. Okay. So did there come a time in --  
8 were you informed of the results of this comparison  
9 between the RWPs and the ZRPs?

10 MR. GOLDBERG: Objection. The question  
11 is vague and ambiguous.

12 BY THE WITNESS:

13 A. Yes, I have been made aware of several  
14 discrepancies throughout time.

15 BY MR. KOHN:

16 Q. And did you receive a written memo  
17 confirming that?

18 MR. GOLDBERG: Steve, I think that the  
19 inherent difficulty, as Mr. Schuster's answer just  
20 indicated, is that you seem to be trying to discuss  
21 a one-time incident, and Mr. Schuster is indicating  
22 to you that he's known about similar related things  
23 over a period of time, so I think he needs a little  
24 time frame or some sort of better parameter defined

1 in the question.

2 BY MR. KOHN:

3 Q. Okay. In terms of the several  
4 discrepancies over a period of time, what period of  
5 time are we talking about?

6 A. Years.

7 Q. Was your supervision aware of that?

8 A. Absolutely.

9

10

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23

24 Q. Okay. Now, when did you learn that over

1 the years there may have been some of these  
2 discrepancies between the RWPs and the ZRPs?

3 MR. GOLDBERG: Objection. Calls for  
4 speculation, is vague and ambiguous. Do you mean  
5 every incident when he learned about various --  
6 BY MR. KOHN:

7 Q. Would say this something you learned  
8 about three or four years ago, or was it something  
9 that was essentially discovered at a certain time?

10 MR. GOLDBERG: Do you understand the  
11 question?

12 THE WITNESS: You need to clarify it,  
13 more specific.

14 BY MR. KOHN:

15 Q. Okay. When did you first become aware  
16 that there might be a discrepancy between what was  
17 on an RWP and what the procedures were in a ZRP?

18 A. 1982.

19 Q. Okay. And calling your attention to  
20 1996, in that year did you become aware -- was  
21 there any review done of RWPs written in 1996?

22 A. Yes.

23 Q. Okay. And approximately when was that  
24 review completed?

1 A. I can't recall.

2 Q. Okay. And when that review of the '96  
3 RWPs was done, do you remember what the finding  
4 was?

5 MR. GOLDBERG: Objection. Vague and  
6 ambiguous, lacks foundation.

7 Do you understand the question?

8 THE WITNESS: Yes.

9 BY THE WITNESS:

10 A. The fix or the corrective action was for  
11 more specific instructions to be placed in the  
12 special instructions of the RWP, guidance to the  
13 worker.

14 BY MR. KOHN:

15 Q. Was there any findings that approximately  
16 one-third of the RWPs there were discrepancies,  
17 one-third of the RWPs comparing them to the ZRPs?

18 A. I can't answer that.

19 Q. And would it be safe to say that in 1996,  
20 Walt Strodl was aware that RWPs, at least some of  
21 them of the work performed in 1996, the work was  
22 inconsistent with the procedural requirements of  
23 the ZRPs?

24 MR. GOLDBERG: Objection. Vague and

## **EXHIBIT 8**

ORIGINAL

UNITED STATES DEPARTMENT OF LABOR  
OFFICE OF ADMINISTRATIVE LAW JUDGES

RANDY D. ROBARGE, )  
 )  
Plaintiff, )  
 )  
vs. ) No. 98-ERA-2  
 )  
COMMONWEALTH EDISON )  
COMPANY, )  
 )  
Defendant. )  
\_\_\_\_\_ )

The deposition of JOHN C. MEYERS,  
called by the Plaintiff, for examination, pursuant  
to notice and pursuant to the Rules of the Supreme  
Court pertaining to the taking of depositions for  
the purpose of discovery, taken before Renee S.  
Boubin, CSR, a Notary Public within and for the  
County of Lake and State of Illinois, at the Power  
House Museum, 100 Shiloh Boulevard, Zion, Illinois,  
on the 16th day of December, 1997, A.D., at the hour  
of 12:00 o'clock p.m.

Exhibit 8, page 1 of 4

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24

Q. Tell me a little bit about his say  
reputation. What was [REDACTED] 's reputation as a  
supervisor?

A. His reputation with who?

Q. With the other supervisors.

A. [REDACTED] is a less technically inclined  
supervisor.

was a  
supervisor who might not have adhered to procedures.  
He may have been considered a supervisor that looked  
the other way, not necessarily held the workers,  
technicians accountable to the standards that were  
necessary for the position.

Exhibit 8, page 2 of 4



22 Q. Did you ever -- have you ever heard of  
23 the phrase PIF wars, a phrase used down at  
24 Commonwealth Edison?

Exhibit 8, page 3 of 4

1           A.     I have heard that phrase, yes.

2           Q.     What's your understanding of what that

3 means, what that refers to?

4           A.     I guess when you have a problem you

5 document the problem and can result in somebody else

6 documenting a problem back on your department and so

7 on.

8           Q.     Essentially that some employees -- in

9 other words, some employees may be upset if a PIF

10 was written about something they did, so they may

11 turn around and write a PIF on something whoever

12 wrote the PIF on them did. Is that what we are kind

13 of talking about here?

14           A.     Yes. That can be considered as a PIF

15 war, yes.

Exhibit 8, page 4 of 4

## **EXHIBIT 9**

UNITED STATES DEPARTMENT OF LABOR  
OFFICE OF ADMINISTRATIVE LAW JUDGES

In the Matter of:

Randy D. Robarge	:	
	:	
Complainant	:	
	:	
vs.	:	Case No. 98-ERA-2
	:	
Commonwealth Edison	:	
	:	
Respondent	:	

Hearing held at  
Kenosha County Center  
Highway 45 & 50, Room A  
Bristol, WI 53104

on Monday, May 18, 1998

The hearing in the above-entitled matter commenced,  
pursuant to notice, at 11:12 a.m.

BEFORE: HONORABLE THOMAS F. PHALEN, JR.  
Administrative Law Judge

APPEARANCES:

On Behalf of the Complainant:

Michael Kohn, Esquire  
Steven Kohn, Esquire &  
David Colapinto, Esquire  
3233 P Street, N.W.  
Washington, DC 20007-2756

On Behalf of the Respondent:

David A. Goldberg, Esquire &  
Richard F. O'Malley, Esquire  
Sidley & Austin  
One First National Plaza  
Chicago, IL 60603

HEARING TRANSCRIPT

Reported by:  
Brad Weirich  
Court Reporter

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Exhibit 9, page 1 of 18

	<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
1					
2					
3	For the Complainant:				
4					
5	Ronald Schuster	80	153	158	
6	Allen Vedder	161	212	216	217
7	Gerald Ruffolo	219	250	255	
8					
9	For the Respondent:				
10	[None]				
11		***			
12	<u>EXHIBIT</u>	<u>FOR IDENTIFICATION</u>	<u>IN EVIDENCE</u>		
13	ALJ-1 through 4	7		7	
14					
15	JX-1 through 17	8		9	
16	JX-18 through 65	15		15	
17	[Originally RX-1 through 21,				
18	24-27, 36-41, 44-51, 54,				
19	63-65, 68, 70-73]				
20					
21	CX-1 through 35	15			
22					
23	CX-20	246		248	
24					
25	CX-32	206		206	
26					

1 Spell your last name.

2 THE WITNESS:

3 Ruffolo, R-u-f-f-o-l-o.

4 ADMINISTRATIVE LAW JUDGE:

5 Your witness, Mr. Kohn.

6 MR. STEVEN KOHN:

7 Thank you, Your Honor.

8 \*\*\*

9 GERALD RUFFOLO,

10 called as a witness, having first been duly sworn,  
11 according to the law, testified as follows:

12 DIRECT EXAMINATION

13 BY MR. STEVEN KOHN:

14 Q. Mr. Ruffolo, are you married?

15 A. Yes, I am.

16 Q. And do you have any children?

17 A. Yes, I have one child, age five, and my wife  
18 is eight and a half months pregnant to within a couple  
19 weeks.

20 Q. And did you...

21 \*\*\*

22 ADMINISTRATIVE LAW JUDGE:

23 You could be called at any moment.

24 THE WITNESS:

25 I hope not.

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Exhibit 9, page 3 of 18

1 ADMINISTRATIVE LAW JUDGE:

2 All right, go ahead. Go ahead.

3 THE WITNESS:

4 I just called her ten minutes ago. Everything's  
5 fine.

6 ADMINISTRATIVE LAW JUDGE:

7 Okay, go ahead, Mr. Kohn.

8 \*\*\*

9 BY MR. STEVEN KOHN:

10 Q. Can you briefly describe your employment in  
11 the atomic energy industry prior to coming to ComEd.

12 A. Yes, before I came to ComEd I worked seven  
13 years as a contractor for a company called Atlantic Nuclear  
14 Services. That was from February of 1984 until March of  
15 1991.

16 Q. And when did you start work at ComEd?

17 A. I started work at ComEd in March of 1991 as a  
18 station laborer. I was there as a station laborer for my  
19 first ten months at ComEd.

20 Q. And then did you get another position?

21 A. Yes, I was promoted to radiation protection  
22 technician, B level, in January of 1992.

23 Q. And in 1994?

24 A. I was promoted to A technician in January of  
25 1994.

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Exhibit 9, page 4 of 18

1 Q. Are you considered a member of management or  
2 the union?

3 A. I am union, bargaining union employee, or was  
4 a bargaining union employee.

5 Q. And do you know Mr. Randy Robarge?

6 A. Yes, I do.

7 Q. And would you consider him a friend?

8 A. Yes, at this time I consider him a friend.  
9 When I first arrived at the plant, he was an acquaintance.  
10 I was not close to Randy. I knew him through having played  
11 softball against him, but I did not know him other than  
12 that.

13 Q. And does the fact that he's a friend of  
14 yours, would that impact at all on your testimony today?

15 A. No, I'm here to tell the truth based on what  
16 the facts are as I see them.

17 Q. Did Mr. Robarge ever supervise you?

18 A. Yes, Randy was my direct supervisor from the  
19 time I entered the department in January of 1992 until his  
20 exit from the department.

21 Q. And have you been supervised by the other  
22 radiation protection supervisors?

23 A. Yes, I have. I was supervised by all of them  
24 on basically an equal time basis from the moment I entered  
25 the department.

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Exhibit 9, page 5 of 18



1 BY MR. STEVEN KOHN:

2 Q. And again, based upon either comments that  
3 these supervisors said, other than Mr. Randy Robarge, or  
4 your direct observation of what they were doing with Toni  
5 Meyers, did you ever form an opinion as to whether other  
6 supervisors shared your concerns?

7 A. Based on what they thought?

8 Q. Yes.

9 A. Yes, on one particular instance I completed a  
10 task and went out and did another task that was previously  
11 assigned to Ms. Meyers. And the supervisor by the name of  
12 John Meyers made the comment to me he really thanked me and  
13 appreciated me for taking care of that thing and told me  
14 that he wished that Toni would get a work ethic similar to  
15 mine.

16 Q. Have you ever heard of an RP supervisor by the  
17 name of ~~REDACTED~~?

18 A. Yes, I have.

19 Q. Are you friends with him?

20 A. Yes.

21 Q. And did he have a nickname on site?

22 A. Yes, ~~REDACTED~~'s nickname is "~~REDACTED~~."

23 Q. Did he have a reputation concerning adherence  
24 to procedures?

25 A. ~~REDACTED~~'s reputation at Zion Nuclear Plant is

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Exhibit 9, page 6 of 18

1 that he knows how to get things done quickly and he knows  
2 how to do things to bypass procedure.

3 Q. To bypass procedure?

4 A. Yes.

5 Q. And was this, based upon your observation,  
6 well known to just about everyone on site?

7 A. Yes, it's commonly known throughout the plant.

8 Q. Did you ever witness him not following  
9 procedures?

10 A. Yes, I did. One particular instance would be  
11 involving the Unit 2 cavity during -- excuse me, Unit 1  
12 cavity during the last Unit 1 outage. We were doing  
13 routine surveys in the cavity area and the cavity was  
14 posted as just a simple contaminated area. And our  
15 instructions were by procedure and from other upper  
16 management in the department were that if we found a thing  
17 called a hot particle, that we were to evaluate that area  
18 to be set up as what is known as a red zone. And that  
19 would definitely slow work down. And it was identified by  
20 another technician that a hot particle was indeed found and  
21 a follow-up survey also found a hot particle. And ~~his~~'s  
22 response to that was don't worry about it, there's no such  
23 thing as hot particles.

24 Q. And did you in fact create the red zone?

25 A. No, we did not at that time. It got created,

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Exhibit 9, page 7 of 18

1 I believe, on day shift the next day. The following day I  
2 was off. I do recall when I came back that it was a red  
3 zone.

4 Q. How would you compare Mr. ~~Robarge~~' adherence to  
5 procedures to Mr. Robarge's?

6 A. There's really no comparison. Randy adhered  
7 to procedures much more vigorously than ~~Robarge~~ ever  
8 did.

9 Q. And do you know if Mr. ~~Robarge~~ is still working  
10 on site?

11 A. Yes, he is. He is, I believe, now an  
12 operating supervisor.

13 Q. In addition to Mr. ~~Robarge~~, did you ever witness  
14 any other RP supervisor knowingly violate a rad waste  
15 procedure?

16 A. Yes, I witnessed along the same lines in, I  
17 believe, the same cavity Mr. ~~Robarge~~, who is a first-  
18 line supervisor, basically do the same thing. I discovered  
19 what I believed was a hot particle and I called out to ~~Robarge~~  
20 at the rad office and told him this, that, "Hey, I've got a  
21 hot particle down here in the -- that I found in the  
22 cavity." And he said, "No. you didn't." I said, "What do  
23 you mean?" He goes, "You don't want to find a hot particle  
24 down there; take care of it; just get rid of it."

25

\*\*\*

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Exhibit 9, page 8 of 18

1 MR. GOLDBERG:

2 Your Honor, I ask that the hearsay be stricken from  
3 this witness' testimony.

4 ADMINISTRATIVE LAW JUDGE:

5 Well, let's find out if he took any action in  
6 relation to -- I'm more interested in the action  
7 than the substance.

8 \*\*\*

9 BY MR. STEVEN KOHN:

10 Q. And what happened after you received that  
11 instruction or those comments?

12 A. I followed direction of the supervisor and got  
13 rid of it.

14 Q. Does Mr. [REDACTED] still work on site?

15 A. Yes, he does. He is also an operating  
16 supervisor.

17 Q. And do you know a Mr. [REDACTED]?

18 A. Yes, I do.

19 Q. And what position did he hold in 1996?

20 A. [REDACTED] was and still is a radiation  
21 protection supervisor.

22 Q. And he currently works on site?

23 A. Yes, he does.

24 Q. Did you ever have an interaction with Mr.  
25 [REDACTED] in which you interpreted it as he was bypassing a

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1 procedure?

2 A. Yes, I recall a time when we still needed to  
3 wear a thing called finger rings while...

4 \*\*\*

5 ADMINISTRATIVE LAW JUDGE:

6 Finger rings?

7 THE WITNESS:

8 Yes, the thermal luminescent dosimeter is the  
9 thing that reads radioactivity, absorbs the  
10 radioactivity and it gets accredited to your dose.  
11 And we have a thing called a finger ring. It goes  
12 -- or actually a toe ring if you wore it -- you  
13 wore it on your toe or on your finger. It measures  
14 the amount of radiation to your extremities. At  
15 that time we were doing a source calibration and on  
16 the books in the procedures it was required that  
17 you wore finger rings for this calibration. We  
18 began to do the calibration and I noticed that  
19 myself plus another individual did not have finger  
20 rings, which I stopped the job and I called [REDACTED]  
21 [REDACTED] and I said, "Listen, we're supposed to have  
22 finger rings for this." And he said, "Well, how  
23 far are you into the calibration?". I said,...

24 MR. GOLDBERG:

25 Your Honor, same objection to the extent we're

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1 getting other narrative with multiple layers of  
2 hearsay.

3 ADMINISTRATIVE LAW JUDGE:

4 What if anything -- pick it up. He's got an  
5 objection based upon what he said. It's hearsay.  
6 Did he do anything in relation to it?

7 MR. STEVEN KOHN:

8 Your Honor, because the person -- these comments  
9 are essentially an admission against interest by  
10 the company and a management person for the  
11 company. I don't think that this contains any  
12 hearsay under the definition of hearsay.

13 ADMINISTRATIVE LAW JUDGE:

14 What's your response?

15 MR. GOLDBERG:

16 Objection.

17 ADMINISTRATIVE LAW JUDGE:

18 Okay, go ahead with the testimony. He's right.  
19 Your testimony.

20 THE WITNESS:

21 Okay, his response was, "Well, how far are you into  
22 the calibration?" And I told him that we were not  
23 quite halfway into it. He said, "Well, you can  
24 probably get that done, what in about another 15  
25 minutes?" And I said, "Yeah." He goes, "Why don't

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1           you just finish it. Don't worry about the finger  
2           rings."

3   \*\*\*

4       BY MR. STEVEN KOHN:

5           Q.    And what did you do?

6           A.    I questioned him and I said I don't really  
7           think that's the right way to do business. He said, "Hey,  
8           don't worry about it; it's not that big of a deal." The  
9           source that we were working with was not that high a power  
10          of a source and finger rings are more needed, according to  
11          him, for the higher power source. And I said okay and I  
12          agreed to finish the job very shortly.

13          Q.    Did Mr. Robarge ever give you instruction to  
14          violate procedures?

15          A.    No.

16          Q.    Calling your attention to the  
17          September/October 1996 time period, were you asked to  
18          review radiation protection procedures to determine if  
19          there had been violations concerning the radiation work  
20          permits?

21          A.    Yes, I was. In September, I believe it was  
22          the second week of September, we had what was known as a  
23          stand down. There were some critical errors being made  
24          within the plant. We had just started an outage. The then  
25          site vice president, John Muller, declared that we would

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Exhibit 9, page 12 of 18

1 have a stand down until all the work departments had shown  
2 him that they were ready to go back to work. And I was  
3 instructed at what would be the evening meeting, 6:00 in  
4 the evening, that my job was to review RWPs and/or  
5 procedures to make sure that things were correct.

6 Q. And did you in fact conduct a review of the  
7 RWPs and procedures in or about September 1996?

8 A. Yes, I did.

9 Q. And what did you find?

10 A. We had approximately 300 RWPs, radiation work  
11 permits, on file for work at that time. I went through  
12 each one. And out of 300. I found approximately 70 that  
13 had things that needed corrections. Some were simply minor  
14 typographical errors. Two in particular were at that time  
15 direct procedure violations.

16 Q. And can you describe for the Court what the  
17 direct procedure violations were that you remember?

18 A. Yes, we had one RWP that was for working in an  
19 area known as the pump deck for an activity known as sludge  
20 lancing. This RWP allowed the worker to work within a dose  
21 rate field of up to 15,000 milligram. In one of our ZRPs  
22 at that time we had a blanket statement that stated that  
23 work in a dose rate field of greater than 3000 milligrams  
24 per hour had to be approved by the HPSS. And nowhere on  
25 that RWP was there any approval given. It was just simply

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1 signed by a supervisor and an ALAR analyst.

2 Q. And did that raise any safety concern to you?

3 A. Yes, at that time Mr. Greg Kassner was the rad  
4 protection outage coordinator on our shift. Greg Kassner  
5 was the rad protection manager before Walt showed up. I  
6 brought to his attention the fact that this problem  
7 existed, that it was something -- either the procedure  
8 needed to be changed or the RWP needed to be changed in  
9 order for this work permit to be allowed to work on this.  
10 Mr. Kassner noted that in a log book that as I read it it  
11 said Jerry Ruffolo made a very keen observation regarding  
12 this RWP. The procedure states that it violates -- that it  
13 is a violation and you cannot work in a dose rate field of  
14 greater than 3000 milligrams per hour without HPSS  
15 approval.

16 Q. And do you know if anyone got disciplined for  
17 this violation of procedure that you identified?

18 A. No, nobody got disciplined. Nothing was ever  
19 done at all either.

20 Q. And although you were talking with Mr.  
21 Kassner, was Mr. Strodl the manager of the department at  
22 the time?

23 A. Yes, he was.

24 Q. And did this raise a health and safety issue  
25 with you?

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1 THE WITNESS:

2 My name is Russell Scott Satterfield. I live at  
3 3000 James Avenue, Winthrop Harbor, Illinois.

4 COURT REPORTER:

5 Could you spell your last name, please?

6 THE WITNESS:

7 S, as in Sam, A-T-T-E-R-F-I-E-L-D.

8 \*\*\*

9 RUSSELL SATTERFIELD,  
10 called as a witness, having first been duly sworn,  
11 according to the law, testified as follows:

12 DIRECT EXAMINATION

13 BY MR. STEVEN KOHN:

14 Q. Mr. Satterfield, are you currently employed?

15 A. Yes, I am.

16 Q. And where do you work?

17 A. Commonwealth Edison.

18 Q. At what location?

19 A. Zion Station.

20 Q. And how long have you worked there?

21 A. Seven-and-a-half years.

22 Q. And are you a management or a union employee?

23 A. I am a bargaining unit employee.

24 Q. And do you know Mr. Randy Robarge?

25 A. Yes, I do.

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1 Q. Would you consider him a friend?

2 A. Yes.

3 Q. Is the fact that he may be your friend -- does  
4 that, in any way, interfere with your ability to tell the  
5 truth today?

6 A. No, it will not.

7 Q. If I was to ask you a question which might be  
8 harmful to Mr. Robarge, would you answer that truthfully?

9 A. Yes.

10 Q. And what department in Commonwealth Edison do  
11 you work in?

12 A. Radiation protection.

13 Q. And how long have you worked in that  
14 department?

15 A. Approximately five-and-a-half years.

16 Q. And did Mr. Robarge ever supervise you?

17 A. Yes, he did.

18 Q. My question for you, Mr. Satterfield, is do  
19 you file PIFs at work?

20 A. I have, yes.

21 Q. Will you now? Do you -- is that something you  
22 want to do?

23 A. No.

24 Q. Why don't you want to file PIFs?

25 A. The process isn't very good.

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1 Q. And what is wrong with the process?

2 \*\*\*

3 MR. GOLDBERG:

4 Objection, Your Honor. It calls for speculation.

5 ADMINISTRATIVE LAW JUDGE:

6 Well, I think he can state his view as to why he is  
7 not going to do it. Go ahead.

8 THE WITNESS:

9 It doesn't quite work well because they never come  
10 back and interview me. They -- I -- let's say, I  
11 write the PIF. It would then go out and be  
12 completely resolved and just -- the results be  
13 given to me and I would read it and say, well, this  
14 isn't correct.

15 \*\*\*

16 BY MR. STEVEN KOHN:

17 Q. In terms of finger pointing, does that ever  
18 happen or do you have that concern about a PIF?

19 \*\*\*

20 MR. GOLDBERG:

21 Objection, Your Honor. The time frame?

22 MR. STEVEN KOHN:

23 1996.

24 THE WITNESS:

25 I believe that was happening, yes.

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\*\*\*

1  
2 BY MR. STEVEN KOHN:

3 Q. And did that raise an issue for you  
4 personally, in terms of your willingness to file PIFs?

5 A. Yes.

6 Q. What was that concern?

7 A. That the process was meant to fix a problem,  
8 not get a certain individual in trouble. So at that point,  
9 I would either just fix the problem myself in the field  
10 with the person that was in question.

11 Q. And why -- and how does finger pointing relate  
12 to that?

13 A. Some people would take that as -- I -- if  
14 someone did something wrong, if I were to write the PIF on  
15 the problem they did, they would take it personally.

16 Q. Did you ever -- when is the last time you  
17 filed a PIF?

18 A. I don't recall. It has been quite a while.

\*\*\*

19  
20 MR. STEVEN KOHN:

21 Nothing further.

22 ADMINISTRATIVE LAW JUDGE:

23 Do you have any cross?

24 MR. GOLDBERG:

25 One moment, Your Honor.

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## **EXHIBIT 10**

1 Yes, Your Honor, that's correct. Thank you.

2 MR. MICHAEL KOHN:

3 Thank you, Your Honor.

4 ADMINISTRATIVE LAW JUDGE:

5 Call your witness, Mr. Kohn.

6 MR. MICHAEL KOHN:

7 Next witness we call is Allen L. Mosbaugh.

8 ADMINISTRATIVE LAW JUDGE:

9 Okay. Sir, would you stand and raise your right  
10 hand, sir?

11 \*\*\*

12 (Witness sworn)

13 \*\*\*

14 ADMINISTRATIVE LAW JUDGE:

15 All right, sir, have a seat there. When you're  
16 comfortable, state your full name and your address  
17 for the record.

18 THE WITNESS:

19 My name is Allen Lee Mosbaugh. My address is 2692  
20 Boggs, B-o-g-g-s, Road, Amelia, A-m-e-l-i-a, Ohio  
21 45102.

22 ADMINISTRATIVE LAW JUDGE:

23 And spell your last name, please.

24 THE WITNESS:

25 M-o-s-b-a-u-g-h. First name is A-l-l-e-n.

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EXHIBIT 10

1 ADMINISTRATIVE LAW JUDGE:

2 All right, sir. Your witness, Mr. Kohn.

3 \*\*\*

4 ALLEN LEE MOSBAUGH,  
5 called as a witness, having first been duly sworn,  
6 according to the law, testified as follows:

7 DIRECT EXAMINATION

8 BY MR. MICHAEL KOHN:

9 Q. Can you briefly describe your formal  
10 educational background?

11 A. After high school, I enrolled in the  
12 engineering program at the University of Cincinnati. I was  
13 in the Department of Chemical and Nuclear Engineering. I  
14 obtained my bachelor's in engineering majoring in chemical  
15 engineering. I proceeded into graduate program again in  
16 the College of Engineering at the University of Cincinnati.  
17 I got my Masters of Science majoring in chemical and  
18 nuclear engineering. I proceeded into a Ph.D. program  
19 after that again at the University of Cincinnati and  
20 completed almost all of the course work degree requirements  
21 for my doctorate. I was engaged as a research assistant at  
22 that time both with my masters and with my Ph.D. doing  
23 contract research for the Atomic Energy Commission  
24 investigating loss of coolant accident and analysis  
25 phenomenon, especially with respect to a two-phase flow and

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1 transient two-phase flow.

2 \*\*\*

3 ADMINISTRATIVE LAW JUDGE:

4 Okay. Before you go any further, I have a  
5 disclosure to make. I have met this witness  
6 before. I was a member of the Board of Trustees at  
7 the University of Cincinnati for nine years. As I  
8 say, I don't know this person, Mr. Mosbaugh, and I  
9 need to know if there's any objections at this  
10 point.

11 MR. GOLDBERG:

12 None, Your Honor.

13 ADMINISTRATIVE LAW JUDGE:

14 Okay. Proceed.

15 THE WITNESS:

16 I did not complete the -- my Ph.D. dissertation and  
17 I left the University of Cincinnati without  
18 receiving my doctorate degree. I at that time  
19 entered the nuclear power industry being employed  
20 with the Babcock and Wilcox Company. At a later  
21 time of employment I continued to take some nuclear  
22 engineering graduate courses that were being  
23 offered at a nuclear plant that I was stationed at  
24 by professors again from the University of  
25 Cincinnati. But that would be my formal education

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1 summary.

2 \*\*\*

3 BY MR. MICHAEL KOHN:

4 Q. If you could turn to Complainant's Exhibit 38,  
5 which is a copy of your resume. Did you prepare this  
6 document?

7 A. Yes.

8 Q. And I note that starting on the last page  
9 going forward to the bottom of the first page there's a  
10 chronology of your employment mostly in the nuclear  
11 industry. Could you highlight the areas you believe impact  
12 on your qualifications to testify here today?

13 A. All right. 1974 to 1977 I was employed by the  
14 Babcock and Wilcox Company. And in the course of that  
15 employment I worked at three different nuclear power  
16 plants. And among other things that I did in that period  
17 of time, I was an engineer -- a test engineer and I was  
18 also a consultant to the station's chemistry/radiation  
19 protection superintendent as they were called in that time  
20 period. And that was at the Davis Bessey plant that is  
21 Toledo Edison's at the time. I did some work with Babcock  
22 and Wilcox on examining a spent fuel assembly at the  
23 Lynchburg Research Center that had come from the Occonee  
24 plant.

25 After I left the employ of the Babcock and Wilcox

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1 Company I was employed by a company called EDS Nuclear as a  
2 consultant at the Cincinnati Gas and Electric's Zimmer  
3 plant and in that period of time among other things I was a  
4 test engineer and I also acted as a consultant to that  
5 plant's chemistry/radiation protection superintendent and I  
6 did testing of their radioactive waste systems. After that  
7 I transferred to the Cincinnati Gas and Electric Company  
8 direct with the utility where I initially was a staff  
9 engineer.

10 I moved up through their engineering organization  
11 to become a engineering supervisor, an engineering  
12 superintendent, and eventually a start-up superintendent.  
13 In those capacities I did a lot of testing of various plant  
14 systems. I established their system engineering program  
15 and I was the nuclear fuel custodian and I was involved in  
16 receiving the initial core of nuclear fuel as well as  
17 shipping the nuclear fuel back to Exxon. In 1984 Zimmer  
18 plant was closed as a nuclear plant and I was recruited to  
19 come to the Georgia Power's nuclear plant Vogel in August  
20 -- near Augusta, Georgia. And I went down there as a -- I  
21 think the title was a pre-operational superintendent. It  
22 was basically an engineering superintendent.

23 I was promoted up through their organization,  
24 became an engineering manager. I was responsible for  
25 establishing their system engineering group and was

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1 responsible for testing of the Vogel's various systems. As  
2 an engineering manager, I was responsible for the entire  
3 engineering department, which was about 60 or 70 engineers,  
4 the quality control department, and the security  
5 department. I also had responsibility for the plant's  
6 administrative procedures for writing them and setting  
7 their policy and revising them as necessary. I was also a  
8 plant duty manager.

9 As I progressed in their organization, I eventually  
10 elevated to the level of assistant general manager of plant  
11 support. Basically that position is one of the two top  
12 managers and we each had about half of the plant under us  
13 and we reported to the plant general manager. I was the  
14 assistant general manager of plant support. In that  
15 capacity I had eight different departments that worked for  
16 me and that would include engineering, the regulatory  
17 licensing department, which had the main interface  
18 responsibility with the Nuclear Regulatory Commission and  
19 responding to NRC violations.

20 I had quality control, security training. That's  
21 the department that did all the plant's training including  
22 the training of the operators for reactor operator and  
23 senior reactor operator licenses. They also had emergency  
24 planning reporting to me, personnel, administration,  
25 document control and that was about half of the plant's

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1 departments. In that period of time I had been responsible  
2 for the administrative procedures of the plant. I had an  
3 individual under me that was referred to as the procedure  
4 supervisor and programs such as the plant's deficiency  
5 program, which at Vogel we called a DC, was a program that  
6 I established. In fact, I helped develop the program,  
7 write the procedure and was responsible for its  
8 administration.

9 Subsequently I was vice chairman of the Plant  
10 Review Board and a member of the Plant Review Board. I was  
11 also an emergency director and duty manager. My last  
12 capacity at Georgia Power was I had been selected to get a  
13 senior reactor operator's license as a manager on that  
14 plant. And I would note that while I was with Cincinnati  
15 Gas and Electric at the Zimmer station I received senior  
16 reactor operator's license training and was certified as  
17 such at the Zimmer plant.

18 Q. You mentioned a DC program at plant Vogel.  
19 There's been a lot of testimony in this proceeding about a  
20 PIF process. Does the DC program at plant Vogel have any  
21 similarities or equivalents to the PIF process?

22 A. Yes, I have reviewed the Zion's PIF procedure  
23 and it essentially analogous to the program that we had at  
24 the plant Vogel which was referred to generally as the DC  
25 program. DC stood for deficiency card. And they're

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1 similar program implementing the same NRC criteria from 10  
2 CFR 50 Appendix B.

3 Q. Have you ever testified as an expert witness  
4 before?

5 A. Yes, I have.

6 Q. Where was that?

7 A. Between 1990 and 1996 in a Department of Labor  
8 proceeding and also between 1992 and 1996 in a Atomic  
9 Safety and Licensing Board proceeding. In those  
10 proceedings specifically I gave testimony on plant Vogel's  
11 deficiency program.

12 Q. And if I understand it, you appeared as an  
13 expert witness before the Atomic Safety Licensing Board.  
14 Were you an expert witness in the Department of Labor case  
15 or were you just appearing as a witness in that proceeding?

16 A. I was the initiator of that proceeding, a  
17 whistleblower, I guess.

18 Q. Which gets me to my next question.

19 A. Okay.

20 Q. Did you ever file a proceeding under Section  
21 210 of the Energy Reorganization Act?

22 A. Yes, I did.

23 Q. Is there a reported decision issued by the  
24 Secretary of Labor with respect to that proceeding?

25 A. Yes, there is.

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1 Q. What was the sum and substance of the holding  
2 of the Secretary of Labor?

3 A. The Secretary of Labor found in my favor,  
4 found that I had been terminated for the protected activity  
5 that I engaged in, ordered me reinstated. Is it possible  
6 that I could have a glass of water?

7 \*\*\*

8 ADMINISTRATIVE LAW JUDGE:

9 Sure. Could we get a...

10 MR. MICHAEL KOHN:

11 I did ask someone to try to find that for you.

12 \*\*\*

13 BY MR. MICHAEL KOHN:

14 Q. Did the Secretary of Labor determine that the  
15 only reason you were terminated was for engaging in  
16 protected activity?

17 A. Yes.

18 Q. Who represented you before the Department of  
19 Labor?

20 A. The firm of Kohn, Kohn & Colapinto.

21 Q. And who represented you before the Atomic  
22 Safety and Licensing Board?

23 A. The same firm.

24 Q. Did those proceedings end in 1996?

25 A. Yes.

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-  
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1 Q. And since the termination of those proceedings  
2 and until the point in time you were contacted to function  
3 as an expert witness in this proceeding have you had any  
4 involvement with the Kohn, Kohn & Colapinto law firm?

5 A. None at all.

6 Q. Does the fact that you were represented by  
7 Kohn, Kohn & Colapinto in the past have any bearing on your  
8 ability to provide forthright and truthful testimony in  
9 this proceeding?

10 A. No.

11 Q. I think you testified that you have reviewed  
12 plant Zion's PIF procedures and I believe you were  
13 referring to the exhibit contained -- the Joint Exhibit 6,  
14 is that correct?

15 A. Yes.

16 Q. Does the PIF process impact on the safe  
17 operation of plant Zion?

18 A. Absolutely.

19 Q. What is 10 CFR Part 50 Appendix B?

20 A. 10 CFR 50 Appendix B is the portion of the  
21 Code of Federal Regulations governing nuclear energy. And  
22 that specific section defines the quality assurance  
23 programs at nuclear power plants and there are 18 criteria  
24 in that section that define specific elements of the  
25 quality assurance program that are required by the Nuclear

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1 Regulatory Commission.

2 Q. And how did the PIF procedures relate to 10  
3 CFR Part 50 Appendix B?

4 A. The PIF procedures directly implement several  
5 of the criterion from 10 CFR 50 Appendix B.

6 Q. And are all nuclear plants required to have  
7 similar procedures?

8 A. Yes.

9 Q. At every nuclear plant you worked at was there  
10 a similar procedure in place equivalent to the PIF process?

11 A. Yes, different plants implement those  
12 criterion slightly different and the way they implement it  
13 has changed over the many years. But every plant is  
14 required to have procedures that implement those and the  
15 PIF program is -- at plant Zion is part of that. Different  
16 plants sometimes call those document non-conformances.  
17 They might call them deficiencies. Here they're call them  
18 PIFs but they serve the same purpose.

19 \*\*\*

20 MR. MICHAEL KOHN:

21 We'd like to qualify the witness as an expert, Your  
22 Honor.

23 ADMINISTRATIVE LAW JUDGE:

24 Any objection?

25 MR. GOLDBERG:

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1 Yes, Your Honor, objection to the extent that we  
 2 have no idea at the moment what area of opinion  
 3 testimony this witness is prepared to go into. As  
 4 I understand it, given the fact that I took this  
 5 gentleman's deposition a few evenings ago, my  
 6 understanding is that one of the areas of his  
 7 expert testimony would purport to be in the area of  
 8 human relations, human resources, personnel, and  
 9 discipline matters despite the individual's very  
 10 esteemed background in the nuclear industry. I  
 11 didn't hear any mention of human resources training  
 12 or anything with respect to discipline or personnel  
 13 and I don't know that this witness to be expert in  
 14 that type of testimony.

15 ADMINISTRATIVE LAW JUDGE:

16 All right. Well, at this point I'm going to  
 17 qualify him. You may state a specific objection  
 18 with regard to a human resource matter that you  
 19 believe is not within the field of his expertise.

20 MR. MICHAEL KOHN:

21 Thank you, Judge.

22 ADMINISTRATIVE LAW JUDGE:

23 All right. You may proceed, Mr. Kohn.

24 \*\*\*

25 BY MR. MICHAEL KOHN:

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1 Q. How many nuclear -- I don't recall if I asked  
2 you how many nuclear plants you have worked at.

3 A. I worked at five different nuclear power  
4 plants with five different utilities.

5 Q. Is strict adherence of the PIF procedures  
6 necessary...

7 A. Yes.

8 Q. ...at plant Zion?

9 A. Yes.

10 Q. Would it be appropriate for managers to  
11 deviate from the plant PIF procedures?

12 A. No, a procedure such as the procedures  
13 implementing the PIF program which are directly related to  
14 10 CFR 50 Appendix B, these are administrative level  
15 procedures. These procedures have been crafted with great  
16 care and attention generally by the utilities. And since  
17 they're such an important part of the program they need to  
18 be followed as written. There are program designs built  
19 into them in the way they're written and in the way they're  
20 sequenced.

21 Q. Would it be appropriate for a department  
22 manager to issue an instruction that he be notified of the  
23 initiation of a PIF in his department before a PIF  
24 committee meeting was to commence?

25 A. No, for the reasons that I just mentioned. A

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1 procedure -- in order to adequately implement a program  
2 like a PIF program you have to -- you're trying to get your  
3 plant people to identify problems and you're trying to  
4 stress -- you need to stress attention to detail and  
5 verbatim following of your procedures. Follow the  
6 procedures as written. And it's an opportunity for  
7 management to stress that, to stress following procedures  
8 as written to make the entire program work. And when a  
9 manager is going to say, "Okay, we can work around this.  
10 We can add something. We can take something away perhaps,"  
11 the program starts to break down because the manager is in  
12 a position to set by example. From what he does, he sets  
13 the tone for the rest of the employees.

14 And the employees are not going to -- they're going  
15 to look at him and they're saying, "Okay, he did it this  
16 way," and they will follow him by example. And if his  
17 example is, "No, we must follow the procedure as written  
18 and if you see a valid reason to change this procedure then  
19 I will take it back through the approval process that it  
20 went through initially and I will get it changed," and when  
21 the people see that, okay, that's very positive for the  
22 plant. The other side of the coin is if they don't see  
23 that they think, "Well, maybe there's some flexibility  
24 here. Maybe in my conduct of business I can exercise  
25 similar flexibility." And that's where administrative

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1 programs start to break down.

2 Q. Is there a potential that the PIF procedures  
3 when they were being designed and conceived had -- someone  
4 thought of the intent and possibly ramifications of this  
5 additional type of notification and decided not to include  
6 such in the procedure?

7 \*\*\*

8 MR. MICHAEL KOHN:

9 Objection, Your Honor. No foundation.

10 ADMINISTRATIVE LAW JUDGE:

11 Yes, it's pretty speculative. Pretty speculative.

12 \*\*\*

13 BY MR. MICHAEL KOHN:

14 Q. Can -- Mr. Mosbaugh, can you tell the Court  
15 what types of...

16 \*\*\*

17 ADMINISTRATIVE LAW JUDGE:

18 Let me ask a question while we're -- while you're  
19 looking up whatever you're looking at. And this is  
20 really for my -- just my own knowledge.

21 \*\*\*

22 BY THE COURT:

23 Q. These programs, PIF, whatever they're called  
24 from plant to plant, are these the kind of programs that  
25 get -- that the documentation for which gets a circulation

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1 through the different nuclear power companies so that you  
2 -- after a period of time you begin to pick up kind of  
3 standard language at different plants that -- as they  
4 implement these requirements of 10 CFR?

5 A. Let me be clear on your question. Are the  
6 procedures themselves receive circulation plant to plant so  
7 that different plants are looking at how are they doing it  
8 and maybe we'll write ours like that...

9 Q. Right, and maybe even adopting...

10 A. Yes.

11 Q. ...blocks of language for it?

12 A. Yes, yes. Part of what would be done in  
13 configuring a program like this would be look at other  
14 plants' programs, possibly to take trips to other plants,  
15 see how the program's working there. Yes, that would  
16 absolutely be...

17 Q. So kind of a standard language thing that  
18 takes place?

19 A. Your plants would be looking at all the other  
20 plants, how standard it is. There isn't a requirement  
21 through the NRC that...

22 Q. There's no circulated standard language that  
23 says, "We'd like you to come in line with this language in  
24 your own internal program"?

25 A. No, I haven't seen that but I am aware of

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1 where the NRC if they feel your program may be inadequate  
2 in some way might suggest, "Go look over here, they have a  
3 good program." Also the INPO Organization would do similar  
4 things. If you thought you might want to enhance your  
5 program, suggestions and information would be obtained  
6 through INPO that, you know, "Okay, go look at, you know, a  
7 particular utility, a particular plant. We found their  
8 program to be very good. Go look at theirs." And I know  
9 I've made trips for purposes like that and I know that  
10 that's very common.

11 Q. But in the final analysis each plant...

12 A. In the final analysis each plant can write--  
13 can implement the criterion of the NRC in a procedure that  
14 it configures and doesn't have to have it verbatim with  
15 what somebody else has.

16 \*\*\*

17 ADMINISTRATIVE LAW JUDGE:

18 All right. Go ahead, Mr. Kohn.

19 \*\*\*

20 BY MR. MICHAEL KOHN:

21 Q. Can you explain any perceivable problems that  
22 could cause -- that could be caused by requiring an  
23 employee to supply a copy of a PIF to a departmental  
24 manager at the time the PIF is initiated?

25 \*\*\*

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1 MR. GOLDBERG:

2 Objection. A hypothetical question, Your Honor.

3 MR. MICHAEL KOHN:

4 Testifying as an expert, Your Honor.

5 ADMINISTRATIVE LAW JUDGE:

6 Well, I'll take it for what it's worth. Let me  
7 hear the testimony on this.

8 THE WITNESS:

9 Yes, I can think of a couple of problems. And one  
10 problem that could occur is managers are typically  
11 very busy. We're in meetings all the time and  
12 generally not very accessible. So one problem that  
13 occurs is the problem of possible delay. And it  
14 also places a burden on an individual to do that  
15 notification and then discussion that may result.  
16 It does present the possibility managers are--  
17 will sometimes try to encourage or dissuade an  
18 employee in a discussion. That does happen. And  
19 employees are quite sensitive to talking especially  
20 with a higher level manager, one that they may not  
21 directly work for. And there's a certain amount of  
22 reluctance when talking to higher level people.

23 And so I think there are some elements of--  
24 that could create, you know, some sort of chilling  
25 effect in the writing of problems, PIFs, things of

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1           that nature. Generally in these kinds of programs  
2           it's desirable to have the employee be able to  
3           easily and feel in a very unencumbered way the  
4           ability to identify problems and not feel in any  
5           way that they're going to be dissuaded from writing  
6           them for anybody to make them feel like, "Hey, this  
7           isn't a significant problem," or, "Well, why are  
8           you doing that? And you're -- you know, you're a  
9           troublemaker, you keep identifying problems."

10           The management attitude of the plants needs to  
11           be an attitude of, "We succeed by identifying our  
12           problems, we want you to identify our problems. If  
13           you don't identify our problems for us one of those  
14           problems is going to come up and bite us. It's  
15           going to cause us a safety problem. It's going to  
16           cause us an accident. It's going to cause -- it's  
17           going to hurt us." And the attitude need to be  
18           very positive and the NRC has stressed that at many  
19           plants.

20                           \*\*\*

21       BY MR. MICHAEL KOHN:

22           Q. Do you have an opinion as to whether plant  
23       Zion was having difficulty implementing the PIF procedures  
24       during the point in time that Randy Robarge was employed?

25                           \*\*\*

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1 ADMINISTRATIVE LAW JUDGE:

2 Yes or no.

3 THE WITNESS:

4 Yes.

5 \*\*\*

6 BY MR. MICHAEL KOHN:

7 Q. And what is your opinion?

8 A. They were.

9 Q. Can you identify Complainant -- I believe you  
10 should have a copy of Complainant's Exhibit 39.

11 \*\*\*

12 ADMINISTRATIVE LAW JUDGE:

13 Mr. Kohn, is this a basis question now to his  
14 response?

15 MR. MICHAEL KOHN:

16 Yes.

17 ADMINISTRATIVE LAW JUDGE:

18 Go ahead.

19 MR. MICHAEL KOHN:

20 This is the...

21 ADMINISTRATIVE LAW JUDGE:

22 I don't want you going on without asking the basis.

23 MR. GOLDBERG:

24 Could I get the number again, Mr. Kohn, please?

25 MR. MICHAEL KOHN:

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1 39.

2 \*\*\*

3 BY MR. MICHAEL KOHN:

4 Q. And if you would look at page 39 -- I'd call  
5 everyone's attention to page 27. Is there -- have you  
6 reviewed the document marked as Complainant's Exhibit 39?

7 A. Yes.

8 Q. And does this document contain information you  
9 relied upon to reach your conclusion?

10 A. Yes.

11 Q. And can you explain what it is in this  
12 document that pertains to your conclusion?

13 A. The plant was cited for an NRC violation  
14 related to losing a -- some sort of foreign material into  
15 the reactor cavity that wasn't retrievable. And part of  
16 the reason for the violation and part of the improper  
17 actions by the employee was that a PIF was not identified  
18 for this condition.

19 \*\*\*

20 MR. MICHAEL KOHN:

21 We call for the admission of Complainant's Exhibit  
22 39.

23 ADMINISTRATIVE LAW JUDGE:

24 Any objection?

25 MR. GOLDBERG:

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1 No, Your Honor.

2 ADMINISTRATIVE LAW JUDGE:

3 Hearing none, Complainant's Exhibit 39 is received  
4 and is a part of the record.

5 \*\*\*

6 BY MR. MICHAEL KOHN:

7 Q. Would you turn, Mr. Mosbaugh, to Complainant's  
8 Exhibit 40? My notes indicate you should be looking at  
9 page seven. Is there anything in this document that aids  
10 your conclusion with respect to the PIF as to whether plant  
11 Zion was having difficulty implementing its PIF procedures?

12 A. Yes, in this case the plant received another  
13 violation. In this case it was with respect to some fire  
14 protection issues. And a part of the reason for the  
15 violation was that even though the issue was brought up by  
16 the NRC resident apparently to the fire marshall a PIF was  
17 not identified and not initiated.

18 Q. And that was a violation of the PIF  
19 procedures?

20 A. Yes.

21 \*\*\*

22 MR. MICHAEL KOHN:

23 Call for admission of Complaint's Exhibit 40.

24 ADMINISTRATIVE LAW JUDGE:

25 Objection?

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1 MR. GOLDBERG:

2 No objection, Your Honor.

3 ADMINISTRATIVE LAW JUDGE:

4 Hearing none, Complainant's Exhibit 40 is received  
5 and is a part of the record.

6 \*\*\*

7 BY MR. MICHAEL KOHN:

8 Q. If you would turn to Complainant's Exhibit 41  
9 page three. Is there anything in this document which  
10 identifies difficulty in compliance with the PIF  
11 procedures?

12 A. Yes, this exhibit contains a level three  
13 violation for which Commonwealth Edison was assessed a  
14 \$50,000 fine. And among the examples contained in this  
15 violation is a case where...

16 \*\*\*

17 ADMINISTRATIVE LAW JUDGE:

18 Which one? Can you point to it?

19 THE WITNESS:

20 On page three item two.

21 ADMINISTRATIVE LAW JUDGE:

22 Okay.

23 THE WITNESS:

24 In this example apparently a total of 114  
25 conditions -- deficient conditions that should have

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1 had a PIF initiated, apparently no PIFs were  
2 initiated.

3 \*\*\*

4 BY MR. MICHAEL KOHN:

5 Q. And if you'd turn to page six, was defined as  
6 a civil penalty, \$100,000?

7 A. I'm sorry. I was incorrect. Yeah, this was a  
8 severity level three problem for which they were assessed a  
9 civil penalty of \$100,000.

10 Q. And if you would now turn to page 15 of this  
11 exhibit. And about halfway down do you see reference to a  
12 September 5, 1996, cite vice president letter?

13 A. Yes, yes. Apparently that is identified there  
14 as a corrective action to Example 1B2 which is the one we  
15 were looking at.

16 Q. And I would turn your attention to  
17 Complainant's Exhibit 8. Does that appear to be the letter  
18 that was initiated as a result of the failure to file the  
19 114 PIFs and the institution of \$100,000 penalty?

20 \*\*\*

21 ADMINISTRATIVE LAW JUDGE:

22 Where are you at now? Are you going off 41?

23 MR. MICHAEL KOHN:

24 I -- yes, Your Honor.

25 THE WITNESS:

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-  
Exhibit 10, page \_\_\_\_ of \_\_\_\_

1 Yes, this letter would appear to be that letter  
2 from that date.

3 MR. MICHAEL KOHN:

4 I think there's an extra set of exhibits.

5 ADMINISTRATIVE LAW JUDGE:

6 Well, I've got a reason for doing this. Thank you.  
7 Repeat the question.

8 MR. MICHAEL KOHN:

9 If I...

10 ADMINISTRATIVE LAW JUDGE:

11 Going to repeat the question?

12 MR. MICHAEL KOHN:

13 Yes.

14 \*\*\*

15 BY MR. MICHAEL KOHN:

16 Q. Is this -- is Complainant's Exhibit 8  
17 referenced in Complainant's Exhibit 41 at page nine?  
18 Excuse me, page 16.

19 A. I see page 15 of 32 of Exhibit 41.

20 Q. Well, thank you. You're correct. Page 15.

21 A. Yes.

22 Q. Okay. And it's under the heading specific  
23 correction action. Can you explain -- I mean does that  
24 mean that this letter was specifically issued as a specific  
25 corrective action to this notice of violation?

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\*\*\*

MR. GOLDBERG:

Objection, Your Honor. Foundation, speculation.

MR. MICHAEL KOHN:

I'll be happy to lay a foundation, Your Honor.

ADMINISTRATIVE LAW JUDGE:

Lay a foundation.

\*\*\*

BY MR. MICHAEL KOHN:

Q. Mr. Mosbaugh, can you tell me your experience with respect to NRC -- the issuances of NRC notices of violation, a plant's response to a notice of violation, and enforcement actions taken by the NRC?

A. Well, I would -- I was responsible for the plant Vogel's response to the notices of violations received there through the Regulatory Compliance Department. I would have been involved in virtually all of such responses and I also would have reviewed all such responses through the plant Review Board. The relationship of this letter as a corrective action to this violation is set forth in Exhibit 41. The violation we've looked at in Exhibit 41 on page three was item two and under Section B. And back here in the back in the company's response to the violation they address the specific corrective actions to violation example 1B2. So there's a -- in this document

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Exhibit 10 pages of



1 there's a direct relationship between this corrective  
2 action of this letter to this violation of the same number.

3 \*\*\*

4 MR. GOLDBERG:

5 Move to strike the testimony, Your Honor. No  
6 basis. Speculative. This was a letter dated  
7 September 5, 1996. Unless this witness knows  
8 the...

9 ADMINISTRATIVE LAW JUDGE:

10 Well, first of all these were documents that were  
11 produced by the company -- by...

12 MR. GOLDBERG:

13 I don't believe so, Your Honor, I'm sorry unless  
14 Mr. Kohn believes otherwise.

15 MR. MICHAEL KOHN:

16 Your Honor, these documents are contained or should  
17 be contained in the documents produced by the  
18 company. This particular one was pulled out of the  
19 public documents room before we got down here.  
20 It's a public document maintained by the Nuclear  
21 Regulatory Commission.

22 MR. GOLDBERG:

23 Exhibit Number 8 are we talking about, Mr. Kohn?  
24 I'm sorry.

25 MR. MICHAEL KOHN:

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1 Oh, oh, excuse me.

2 MR. GOLDBERG:

3 That's what I'm objecting to.

4 MR. MICHAEL KOHN:

5 Oh, I'm sorry. I'm sorry. I -- Exhibit Number 8.  
6 That's it. I'm sorry. I thought Exhibit Number 8  
7 was already in evidence. I -- oh, 8 is in evidence  
8 so I'm not sure what the objection is.

9 MR. GOLDBERG:

10 I didn't have any independent understanding. I may  
11 have been away from the trial at the time that  
12 document was admitted. And if it's being attempted  
13 to be admitted for the first time...

14 ADMINISTRATIVE LAW JUDGE:

15 Okay. I've been informed it's admitted so go ahead  
16 and ask.

17 \*\*\*

18 BY MR. MICHAEL KOHN:

19 Q. Now, these notices of violation and responses  
20 to the notices of violation that are contained at -- that  
21 we've been looking at, are they set out in a specific  
22 format typically?

23 A. The NRC identifies each violation by number  
24 and example and, you know, they -- yes, they are. And  
25 generally the utility then responds to them in the same

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1 fashion.

2 Q. Okay. And then the utility would -- for  
3 instance looking at Complainant's Exhibit 41 on page 14, it  
4 starts out the first heading there, "Admission or denial to  
5 the violation." And then they admit it, correct?

6 A. Right.

7 Q. And then it goes -- the next heading is  
8 "Reason for the violation." And in that area does the  
9 utility then set forth its understanding of the reason for  
10 the violation?

11 A. Correct.

12 Q. And then the next heading is "Corrective steps  
13 that have been taken, results achieved." Would that then  
14 set forth the utility's corrective action that they have  
15 taken?

16 A. Yes.

17 Q. And then the next area deals with specific  
18 corrective actions to violation. Would that then be the  
19 specific corrective action taken to alleviate the specific  
20 cited violation that the utility was relying upon and  
21 explains to the NRC that that was a specific corrective  
22 action they were taking?

23 A. Right. I mean there's general corrective  
24 actions and then specific corrective actions.

25 Q. Okay. And the September 5, 1996, letter,

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1 Complainant's Exhibit 8, is identified as the specific  
2 corrective action with respect to this violation, correct?

3 A. Right, September 5, 1996, letter from the site  
4 vice president.

5 Q. And did you rely on Complainant's Exhibit 8  
6 and Complainant's Exhibit 41 as part of your basis?

7 A. Yes.

8 \*\*\*

9 MR. MICHAEL KOHN:

10 We move for the admission of Complainant's Exhibit  
11 41.

12 ADMINISTRATIVE LAW JUDGE:

13 Any objection?

14 MR. GOLDBERG:

15 No objection, Judge.

16 ADMINISTRATIVE LAW JUDGE:

17 Okay. Hearing none, Complainant's Exhibit 41 is  
18 received and is now a part of the record.

19 MR. MICHAEL KOHN:

20 All right. Now turn your attention to  
21 Complainant's Exhibit 43 page 21.

22 MR. GOLDBERG:

23 Your Honor, while Mr. Kohn is looking I just feel I  
24 need to interject on the record here that before  
25 this witness testified who was not here present to

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1 begin at the conclusion of the last witness Mr.  
2 Steven Kohn is no longer with us. In response to  
3 my question about how long this witness would be  
4 planning to testify on direct examination, he  
5 informed me it would be about 20 minutes. And I'd  
6 just note that for the record so that we are clear  
7 on what our understanding of what we're doing with  
8 this witness is about.

9 ADMINISTRATIVE LAW JUDGE:

10 How long do you have to go here, Mr. Kohn?

11 MR. MICHAEL KOHN:

12 About I think -- little less than halfway done.

13 ADMINISTRATIVE LAW JUDGE:

14 Well, it's longer than that so going to be closer  
15 to an hour. I want you to move along because we're  
16 into time...

17 MR. MICHAEL KOHN:

18 Okay. I will go quickly then.

19 ADMINISTRATIVE LAW JUDGE:

20 ...I really want for the Respondent. So move  
21 along.

22 MR. MICHAEL KOHN:

23 If you would...

24 ADMINISTRATIVE LAW JUDGE:

25 Go ahead with -- where are we at, 21?

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1 MR. MICHAEL KOHN:

2 Yes. 43, Your Honor, page 21.

3 \*\*\*

4 BY MR. MICHAEL KOHN:

5 Q. Do you see any -- did you rely on this  
6 document as a basis to understand that the PIF procedures  
7 were not being fully implemented by the utility?

8 \*\*\*

9 ADMINISTRATIVE LAW JUDGE:

10 Did you get the right page, 21 there in 43? It's  
11 21 of 36, Exhibit 43.

12 THE WITNESS:

13 Yes.

14 \*\*\*

15 BY MR. MICHAEL KOHN:

16 Q. And can you point out what you're relying on  
17 in this document?

18 A. On the page 21 it talks about the condition  
19 where a PIF need not be written for preventing this CAP  
20 program from identifying, correcting the procedures  
21 compliance issues in the areas as identified by the  
22 procedure deficiency. 14 resolved discrepancies just  
23 discussed.

24 Q. And if you would turn to page one of  
25 Complainant's Exhibit 43. Are you familiar with this type

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Exhibit 10

1 document? It's identified as -- the cover page.

2 A. Yeah, this type of document would be something  
3 prepared by the utility when they're going to an  
4 enforcement conference if the NRC has issued a high-level  
5 violation and they will schedule what's called a pre-  
6 decisional enforcement conference and the utility comes to  
7 the NRC and makes a presentation. This would be typical of  
8 the type of presentation material the utility would use.

9 \*\*\*

10 MR. MICHAEL KOHN:

11 We move for the admission of Complainant's Exhibit  
12 43.

13 ADMINISTRATIVE LAW JUDGE:

14 Any objection?

15 MR. GOLDBERG:

16 Only on the grounds with respect time frame, Your  
17 Honor. I see the date on here being March 19,  
18 1997. Complainant was terminated December 9, 1996.

19 MR. MICHAEL KOHN:

20 Your Honor, the events identified here occurred I  
21 believe in '96. And anyway it's going to the  
22 witness's basis for forming his opinion.

23 ADMINISTRATIVE LAW JUDGE:

24 Well, somebody will have to establish the  
25 applicability. Other than that, it's received.

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1           You don't object to the document?

2       MR. GOLDBERG:

3           Not on those conditions, Your Honor, of course.

4       ADMINISTRATIVE LAW JUDGE:

5           It's received for the record. Go ahead.

6                               \*\*\*

7       BY MR. MICHAEL KOHN:

8           Q.    Have you heard of the term PIF 4?

9           A.    Not until I came up here but I have heard  
10       that.

11          Q.    And did you review a few pages from a  
12       deposition where there was discussion of a PIF war, what it  
13       was?

14          A.    Yes, I did.

15          Q.    And does the existence of the concept of a PIF  
16       war further relate to your conclusion with respect to the  
17       proper augmentation of the PIF process at plant Zion?

18          A.    Absolutely. If something like a PIF war as I  
19       understand it was going down going on I would consider that  
20       virtually a complete breakdown of the PIF program and the  
21       quality assurance program that it implements. The concept  
22       as I understand is that people would retaliate against each  
23       other by writing PIFs. Has no place in the nuclear  
24       industry. The management should be by problem address the  
25       problems that are known. There is to be no element of

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1 retaliation. It's totally unprofessional and it's a  
2 breakdown of the system.

3 Q. Do you have an opinion as to -- at the point  
4 in time when Randy Robarge was employed at Commonwealth  
5 Edison and at the point in time that he was terminated  
6 whether Commonwealth Edison was having a regulatory ethic  
7 problem?

8 A. I...

9 \*\*\*

10 MR. GOLDBERG:

11 Objection, Your Honor, to the extent this is an  
12 opinion. Was not -- I'm sorry?

13 ADMINISTRATIVE LAW JUDGE:

14 Well, I want the sequence to go. His answer is yes  
15 or no. Then what?

16 MR. GOLDBERG:

17 Okay.

18 ADMINISTRATIVE LAW JUDGE:

19 What's your...

20 MR. GOLDBERG:

21 Then I'll wait and see if he says yes or no.

22 THE WITNESS:

23 I understand they were...

24 ADMINISTRATIVE LAW JUDGE:

25 No. yes or no.

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1 THE WITNESS:

2 Yes.

3 ADMINISTRATIVE LAW JUDGE:

4 Question, please.

5 MR. GOLDBERG:

6 Now I have an objection, Your Honor.

7 ADMINISTRATIVE LAW JUDGE:

8 Okay. Well, to the...

9 MR. GOLDBERG:

10 Do you want me to pose the objection after the  
11 question is asked? My objection will be the fact  
12 that I believe this is a new opinion that was not  
13 disclosed to me in the course of our deposition and  
14 on that basis move that no testimony be permitted  
15 on the subject, Your Honor.

16 MR. MICHAEL KOHN:

17 Your Honor, it was provided. It is identified in  
18 Complainant's Exhibit 43, which is a document  
19 produced by Respondent in document production. It  
20 specifically includes the admissions of the  
21 Respondent, in fact a regulatory ethic problem.

22 MR. GOLDBERG:

23 I don't want to hold this up, Your Honor. I'll--  
24 just understand that I don't believe I heard this  
25 opinion when I asked specifically what his opinions

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1           would be in this case. I never heard mention of a  
2           regulatory ethics problem out of this witness's  
3           mouth.

4       MR. MICHAEL KOHN:

5           All right. Your Honor, this merely deals with the  
6           PIF process and the fact that part of the basis for  
7           the problem is a regulatory ethics problem. That  
8           was specifically identified by the utility.

9       ADMINISTRATIVE LAW JUDGE:

10           I'll receive it. Now, if we're going to have many  
11           of these objections we could go long time. And the  
12           way that -- and there is a way to deal with it and  
13           deal with it quickly and that dumps it back on me  
14           and that is you produce the deposition and I make a  
15           determination as to whether or not this question or  
16           set of questions was asked. And I deal with that  
17           kind of a matter in a framework. It's up to you to  
18           ask additional questions on your cross examination  
19           as to what these things refer to. So mind you that  
20           when I deal with that I deal with a broad scope.  
21           Go ahead.

22                               \*\*\*

23       BY MR. MICHAEL KOHN:

24           Q. Okay. And in Complainant's Exhibit 43 does  
25           the utility specifically identify a regulatory ethic

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-                               Exhibit 10, page      of

1 problem at plant Zion at the point in time that the  
2 violations being discussed in the conference occurred?

3 A. I found a reference -- or see a reference to  
4 the regulatory ethic in Exhibit 42. You were referring to  
5 Exhibit 43?

6 Q. Okay. Does the existence of a weak regulatory  
7 ethic impact on the implementation of the PIF process?

8 A. I'm not sure I understand the question.  
9 The...

10 Q. How -- your review of Complainant's Exhibit 42  
11 and 43 as it contains information pertaining to a  
12 regulatory ethic problem, how would that impact on the  
13 implementation of the PIF process or strict compliance with  
14 the PIF procedures?

15 A. You know, the failure to implement the PIF  
16 program may well be an example of the regulatory ethic.

17 Q. And given a deficient regulatory ethic, in  
18 your opinion would it be appropriate for employees to  
19 demand strict compliance with a written procedure?

20 A. The employees should demand strict compliance  
21 with the procedures at all times. If the plant was  
22 responding to and felt it had a regulatory ethics problem,  
23 the level of attention in that area is merely increased.  
24 It would be heightened. The needs are much greater.

25 \*\*\*

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Exhibit 10

1 MR. MICHAEL KOHN:

2 Your Honor, we'd like to move in Complainant's  
3 Exhibit 42 and Complainant's Exhibit 45 at this  
4 time.

5 ADMINISTRATIVE LAW JUDGE:

6 Objection?

7 MR. GOLDBERG:

8 No, Your Honor.

9 ADMINISTRATIVE LAW JUDGE:

10 Okay. Hearing none, Complainant's Exhibit 42 and  
11 45 are received and are part of the record.

12 \*\*\*

13 BY MR. MICHAEL KOHN:

14 Q. Mr. Mosbaugh, do you have any background in  
15 what's known as human factors at a nuclear plant?

16 A. Yes.

17 Q. Can you explain what that is?

18 A. Human factors is the issue that deals with the  
19 performance of personnel. It evolved out of Three Mile  
20 Island and the accident there and specifically relates to  
21 how individuals do their job. And a very detailed review  
22 is done in each nuclear power plant, especially in the main  
23 control room, to human factors issues and they are all  
24 encompassing. They have to do with things like how well an  
25 individual can see an instrument, what the shapes, colors,

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1 the types of labeling that might be on them. It gets into  
2 things like what background noise be, how much confusion  
3 there is an area, how many people are allowed in the area,  
4 the layout of the area.

5 They have to do with all the things that relate to  
6 how and why an individual performing a job under various  
7 circumstances including stress circumstances, how he might  
8 be inclined to make an error. And that's the general area  
9 of human factors.

10 Q. And what training or experience do you have in  
11 this specific area?

12 A. Being that I'm -- was certified as a senior  
13 reactor operator, that is something that the operators are  
14 trained on because it's one of the things that could cause  
15 an operator to make an error. Also, operators need to be  
16 sensitive to those issues in performing their job so that  
17 they can get -- give feedback to management if they feel  
18 there are human factors issues. In addition to that, I had  
19 a engineer who was a human factors engineer who worked for  
20 me in the engineering department and he was part of the  
21 control room review which addressed the myriad of human  
22 factors issues with the design of the main control room.

23 I also had the training department which  
24 administered senior reactor operator training as well as  
25 they maintained the simulator for Vogel. That

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Exhibit 10

## **EXHIBIT 11**

UNITED STATES  
DEPARTMENT OF LABOR  
Office of Administrative Law Judges

In the matter of:

Name of Proceeding:

Randy Daniel Robarge

vs.

Commonwealth Edison

Case/Docket Number:

98-ERA-2

Place:

Bristol, Wisconsin

Date:

Tuesday, May 19, 1998

Pages:

261 through 671

York Stenographic Services, Inc.  
34 North George Street  
York, PA 17401-1266  
717-854-0077 - Fax 717-854-0122

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DUPLICATE



UNITED STATES DEPARTMENT OF LABOR  
OFFICE OF ADMINISTRATIVE LAW JUDGES

In the Matter of:

Randy Daniel Robarge	:	
	:	
Complainant	:	
	:	
vs.	:	Case No. 98-ERA-2
	:	
Commonwealth Edison	:	
	:	
Respondent	:	

Hearing held at  
Kenosha County Center  
Highway 45 and 50, Room A  
Bristol, Wisconsin 53104

on Tuesday, May 19, 1998

The hearing in the above-entitled matter commenced,  
pursuant to notice, at 8:06 a.m.

BEFORE: HONORABLE THOMAS F. PHALEN, JR.  
Administrative Law Judge

APPEARANCES:

On Behalf of the Complainant:

Steven Kohn, Esquire  
Michael Kohn, Esquire  
David Colapinto, Esquire  
Kohn, Kohn, and Colapinto, P.C.  
3233 P. Street, N.W.  
Washington, D.C. 20007-2756

On Behalf of the Respondent:

David A. Goldberg, Esquire  
Richard F. O'Malley, Esquire  
Sidley and Austin  
One First National Plaza  
Chicago, Illinois 60603

HEARING TRANSCRIPT

Reported by:  
Brad Weirich  
Court Reporter

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	<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
1					
2					
3	For the Complainant:				
4					
5	Brent Leslie Robinson	265		385	
6	by Mr. O'Malley		315		420
7					
8	Robert G. Chavez	427			
9					
10	Russ S. Satterfield	432			
11	by Mr. Goldberg		436		
12					
13	Michael E. Masopust	438			
14	by Mr. Goldberg		444		
15					
16	Edwin David Dienethal	449		463	
17	by Mr. Goldberg		458		
18					
19	Randy Daniel Robarge	471			
20		526	[As to authenticity]		
21					
22	For the Respondent:				
23					
24	[None]				

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	<u>EXHIBIT</u>	<u>FOR IDENTIFICATION</u>	<u>IN EVIDENCE</u>
28			
29			
30	CX-1	495	503
31	CX-2	522	524
32	CX-3	525	527
33	CX-4	528	530
34	CX-5	530	532
35	CX-6	533	536
36	CX-7	604	
37	CX-8	581	585
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40	CX-35	538	540
41	CX-36	653	657
42			
43	RX-33	323	325
44	RX-50 (a)	327	349
45	RX-50 (b)	329	349
46	RX-66	421	424
47	RX-74 (a)	318	321
48	RX-74 (b)	318	321

1 BRENT ROBINSON,  
2 called as a witness, having first been duly sworn,  
3 according to the law, testified as follows:

4 DIRECT EXAMINATION

5 BY MR. STEVEN KOHN:

6 Q. Mr. Robinson, are you married?

7 A. Yes, I am.

8 Q. And do you have any children?

9 A. I have two children.

10 Q. And what are their ages?

11 A. Almost three and almost one. Very close to  
12 that.

13 Q. And have you ever worked in the atomic energy  
14 industry?

15 A. Yes.

16 Q. Can you briefly describe your background?

17 A. I started working in the nuclear power  
18 business in 1981 for Cincinnati Gas and Electric Company  
19 for approximately three years. And then for the past 14  
20 years at Commonwealth Edison at the Zion Nuclear Station.

21 Q. And what type of work have you performed at  
22 Zion?

23 A. Mostly radiation protection work, but also  
24 some chemistry work. And there was a time where we did  
25 both chemistry and health physics -- radiation protection

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1 work.

2 Q. And when you hired into Commonwealth Edison,  
3 what department did you work in?

4 A. At that time it was the radiation chemistry  
5 department.

6 Q. And did that ever become some other  
7 department?

8 A. Yeah. In 1989, I believe it was, we became  
9 radiation protection. We split between those two groups.  
10 Chemistry went to one department and radiation protection  
11 went to another.

12 Q. And in 1989, what was your position in  
13 radiation protection?

14 A. In 1989 I was a radiation protection  
15 supervisor.

16 Q. And then did you -- what position did you hold  
17 next?

18 A. I was a radiation protection planner  
19 scheduler. And I think that was in 1990.

20 Q. And after that?

21 A. I was a position called a project specialist,  
22 which was really I worked for the department head and did  
23 various projects that he would like me to do. And that was  
24 for approximately a year.

25 Q. And after that?

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1           A.    Then I was promoted to the operational lead  
2 health physicist, which was -- I had the ALARA group, which  
3 is the work planning radiation protection group. I had the  
4 radiation mining program and the radiation plant ethylent  
5 program...

6           Q.    And when...

7           A.    ...those things like that.

8           Q.    And when did you get that position?

9           A.    1993.

10          Q.    Was that -- and did you supervise people in  
11 that position?

12          A.    Yes, I did.

13          Q.    Approximately how many?

14          A.    Approximately six.

15          Q.    And then what was your next position?

16          A.    I was in that position until some time in  
17 1996. And actually, I was still in that position, but I  
18 was given other responsibilities as the lead RP supervisor.

19          Q.    And as the lead RP supervisor in 1996, what  
20 did you do?

21          A.    I was essentially like a general foreman. I  
22 had supervisors that worked for me and then technicians  
23 that reported to those supervisors.

24          Q.    And approximately how many supervisors  
25 reported to you at that time?

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1           A.    I believe it was five.  So I had other of  
2   the -- other people that were reporting to me at that time  
3   and then these people also -- the supervisors also.

4           Q.    And did you -- have you ever -- have -- are  
5   you still in that position now or do you hold another  
6   position?

7           A.    Well...

8           Q.    I mean, after 1996, did you -- were you given  
9   another position?

10          A.    Some time during 1996 and I don't remember  
11   exactly when that was -- approximately July -- I went back  
12   to -- or I took the lead RP supervisor responsibilities  
13   only.

14          Q.    And then did you have another position?

15          A.    It was called an ALARA supervisor at that  
16   time.

17          Q.    Were you ever offered...

18          A.    But...

19          Q.    ...a position on-site that you declined?

20          A.    Yes.

21          Q.    And what was that?

22          A.    It was the radiation protection department  
23   head.

24          Q.    And that would be the position that Mr. Strodl  
25   used to occupy?

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1 A. Yes.

2 Q. And when were you offered that position?

3 A. In March of 1997.

4 Q. And are you currently a ComEd employee?

5 A. Yes. I believe the answer is correct, is,  
6 yes. Yes, I am.

7 Q. Okay. What is your current status?

8 A. I am currently a -- I was given a release date  
9 on May 15, which means I no longer have clearance to Zion  
10 Nuclear Station. Although I am still on the payroll, my  
11 position now is to try to find a job.

12 Q. And are you going to a new job?

13 A. Yes.

14 Q. And where is that?

15 A. At Florida Power and Light.

16 Q. Now, do you know a Mr. Randy Robarge?

17 A. Yes, I do.

18 Q. And is he -- would you consider him a friend?

19 A. Yes, I would.

20 Q. The fact that he is a friend, would you lie in  
21 this Court?

22 A. No.

23 Q. If you had information that might be harmful  
24 to Mr. Robarge, would you freely testify to that?

25 A. Yes.

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1 MR. STEVEN KOHN:

2 Sure.

3 \*\*\*

4 BY MR. STEVEN KOHN:

5 Q. And what was the basis for that opinion?

6 A. The basis for my opinion was that there was  
7 things that were alleged about me that I knew were not  
8 true.

9 Q. And she had made those allegations.

10 A. That is true.

11 Q. Did you know a Mr. ~~John Doe~~?

12 A. Yes.

13 Q. And did he work in your department as a level  
14 6?

15 A. Yes.

16 Q. And had he performed work as an RP supervisor?

17 A. Yes.

18 Q. And were you aware as to whether he had a  
19 reputation concerning adherence to procedures?

20 A. I am not sure I would say a reputation, but I  
21 know he was a get-to-work type -- a get-the-work-done type  
22 of person and didn't reference procedures a lot as a  
23 general statement about ~~him~~.

24 Q. And he had a nickname.

25 A. Yes.

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1 MR. STEVEN KOHN: .

2 And, Your Honor...

3 \*\*\*

4 BY MR. STEVEN KOHN:

5 Q. What is a PIF?

6 A. It is a problem identification form.

7 Q. Could the filing of a PIF, concerning the  
8 radiation protection department, impact upon the  
9 professional standing of the manager of that department?

10 A. Yes, potentially.

11 Q. And it -- can you explain how?

12 A. If -- a PIF is when an -- when you have a  
13 problem obviously. And if a department had many problems,  
14 then that could reflect, in some way, directly on the  
15 supervisor of the group.

16 Q. And at ComEd, have you ever heard of a phrase  
17 PIF wars?

18 A. Yes.

19 Q. And what was your understanding -- and I have  
20 a question. Was that word, PIF wars, used by employees on-  
21 site?

22 A. Yes.

23 Q. And what was your understanding of that  
24 concept?

25 A. It was used somewhat as a negative thing--

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1 write a PIF on somebody and that would -- they would in  
2 turn write a PIF on the person they are -- or the group  
3 that wrote the PIF initially and it would go back and  
4 forth.

5 Q. Now, in -- but PIFs were -- and people were  
6 encouraged to write PIFs.

7 A. Yes.

8 Q. Was there any formal counseling on-site  
9 concerning getting employees to get over this PIF war  
10 concept or concern?

11 A. There was tailgates.

12 Q. And what does that mean?

13 A. Informal direction and awareness-type  
14 information to the group...

15 Q. But...

16 A. ...a group.

17 Q. But no formal training.

18 A. Not that I recall.

19 Q. Did you ever bring a TV onto site?

20 A. Yes.

21 Q. And did you watch it?

22 A. Yes.

23 Q. Did others watch it?

24 A. I believe so.

25 Q. Did anyone tell you to remove the television?

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23					
24	[None]				

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1 ADMINISTRATIVE LAW JUDGE:

2 Any preliminary matters?

3 MR. STEVEN KOHN:

4 No, Your Honor.

5 ADMINISTRATIVE LAW JUDGE:

6 Okay. Call him.

7 MR. STEVEN KOHN:

8 Mr. Randy Robarge.

9 ADMINISTRATIVE LAW JUDGE:

10 All right. Mr. Robarge, do you want to come up  
11 here, please, and stand?

12 \*\*\*

13 (Witness sworn)

14 \*\*\*

15 ADMINISTRATIVE LAW JUDGE:

16 All right, sir. Have a seat there and state your  
17 full name and your address for the record.

18 THE WITNESS:

19 My name is Randy Daniel Robarge, R-O-B-A-R-G-E,  
20 8800 Third Avenue, Kenosha, Wisconsin, 53143.

21 ADMINISTRATIVE LAW JUDGE:

22 Your witness, Mr. Kohn.

23 MR. STEVEN KOHN:

24 Thank you, Your Honor.

25 \*\*\*

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1                   RANDY DANIEL ROBARGE,  
2   called as a witness, having first been duly sworn,  
3   according to the law, testified as follows:

4                   DIRECT EXAMINATION

5   BY MR. STEVEN KOHN:

6           Q.   Mr. Robarge, are you currently married?

7           A.   Yes.

8           Q.   And how long have you been married?

9           A.   Approximately 14 years.

10          Q.   And do you have any children?

11          A.   Yes.

12          Q.   And are they from this marriage or a prior  
13   marriage?

14          A.   A previous marriage.

15          Q.   And how many children do you have?

16          A.   Two.

17          Q.   And what are their ages?

18          A.   Twenty years old, daughter; 22 years old, a  
19   son.

20          Q.   And where did you go to high school?

21          A.   Zion-Benton Township High School.

22          Q.   And is that in this local area?

23          A.   Yes. That is located in Zion, Illinois.

24          Q.   And did you graduate from that high school?

25          A.   Yes, sir.

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1 Q. And in your senior year of high school, did  
2 you take a full-time job?

3 A. Yes, sir.

4 Q. And where was that?

5 A. Down at the Zion Nuclear Plant in Zion,  
6 Illinois.

7 Q. And what type of work did you perform there?

8 A. I was a laborer for Walsh Construction.

9 Q. And that was with a contractor company there.

10 A. Yes.

11 Q. And what were they doing at that time?

12 A. Construction of the nuclear facility.

13 Q. And did you participate in the construction of  
14 that facility?

15 A. Yes, I did.

16 Q. And did you perform any other work at the Zion  
17 Plant, you know, at around this time?

18 A. Yes, I did.

19 Q. And what was that?

20 A. I also worked as a laborer for Pope-Marson  
21 [ph]. And I also worked for a company called X-ray  
22 Engineering.

23 Q. And was that -- and that was at the Zion  
24 Plant.

25 A. Yes.

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1 Q. What years are we talking about now?

2 A. I believe it was 1971 is when I started as a  
3 laborer down there and 1972 or '73 for X-ray Engineering.

4 Q. And was the X-ray Engineering position in any  
5 way related to the work you did in health physics or  
6 radiation protection?

7 A. Yes.

8 Q. And what would that relationship be?

9 A. Well, we were doing non-destructive testing of  
10 the pipe walls that, of course, the fitters would weld.  
11 Also RT and UT of various piping in the plant. We had to  
12 set up -- because there was no radiation protection  
13 department down there and we had to set up the boundaries  
14 that were required by the NRC for, of course, radiography.

15 Q. And I would like you to now look at Joint  
16 Exhibit #1. And is this a copy of your -- of a resume for  
17 you?

18 A. Yes, it is.

19 Q. And I would like you to look at -- you gave  
20 some testimony about working as an X-ray technician. Is  
21 that the first entry in this resume?

22 A. Yes, it is.

23 Q. And can you look at now, the second entry that  
24 is for the years 9 -- September '73 through January '82?  
25 It says Operating Engineers' Local 150. Do you see that?

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1 A. Yes, I do.

2 Q. What was that position?

3 A. I accepted a four-year apprenticeship to  
4 become a journeyman for the Operating Engineers -- for  
5 Local 150.

6 Q. And did you complete that apprenticeship?

7 A. Yes, I did.

8 Q. And did you become a member of that union?

9 A. Yes, I did.

10 Q. And are you currently a member of that union?

11 A. Yes, I am.

12 Q. When you worked as a supervisor in -- at  
13 Commonwealth Edison, were you a member of that union?

14 A. Yes, I was, but I had a withdrawal card.

15 Q. And that enabled you to come back into the  
16 union when you chose.

17 A. Yes. I was still a member, but not active.

18 Q. And what type of work did you perform between  
19 1973 and 1982?

20 A. Operated heavy equipment for Local 150 and as  
21 an owner-operator.

22 Q. And was this work at all related to health  
23 physics work?

24 A. No.

25 Q. And did there -- why did you -- and I am

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1 looking at the third entry on 2/19/92, it mentions Zion  
2 Commonwealth Edison. What happened? I mean, why did you  
3 stop working as an operating engineer?

4 A. I stopped working as an operating engineer  
5 because of the time frame of the economy. It was down.  
6 The building trades were slowing down. I think we were  
7 even in a little bit of a recession. So therefore work was  
8 sparse and, of course, I went back into the field.

9 Q. Okay. Now, prior to February 1982, had you  
10 been terminated from any of the jobs you had previously  
11 held?

12 A. No.

13 Q. Now, in looking at this February 1982 job, it  
14 says, "Commonwealth Edison Zion junior health physics  
15 technician." Can you explain what this position was and  
16 who you worked for?

17 A. I worked for a contractor firm called DNI,  
18 Diversified Nuclear, Incorporated. They are a contracting  
19 firm who supplies contractual technicians to the Zion  
20 Nuclear Plant and various other plants throughout the  
21 country to -- in support of their outages or if they have a  
22 forced outage or the need for contractual help.

23 Q. Okay. And was the work you performed as a  
24 junior health physics technician in any way related to the  
25 work you performed when you became a supervisor at -- when

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1 you worked as a supervisor in 1996?

2 A. It helped because, of course, that -- the--  
3 your -- you obtain time to get your ANSI qualifications by  
4 on-the-job training. So, yes.

5 Q. And so these -- the time you worked here would  
6 be applicable to your ANSI...

7 A. Qualifications.

8 Q. ...for ANSI qualifications?

9 A. That is correct.

10 Q. What about the substance of this work? Is  
11 this the type of work performed or supervised by a  
12 radiation protection department?

13 A. Yes. It -- that -- the work was just like the  
14 bargaining unit employees down there. Maybe not to the  
15 major scope of the bargaining unit employees at  
16 Commonwealth Edison, but it was the scope of work that the  
17 contractual -- I mean, that the bargaining unit employees  
18 performed down at Edison.

19 Q. So the work you performed at Zion during this  
20 time period would be similar, say, to the work of a "B"  
21 tech or a contractor to a "B" tech?

22 A. Yes. Probably all -- probably a little bit  
23 higher up because there wasn't an established -- a real  
24 established training program like we had back then as far  
25 as this is concerned.

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1 Q. And now, the next entry, this goes -- and I  
2 notice this entry goes from February to May -- February  
3 1982 to May of '83. And then you have another entry August  
4 '83 to -- through November of '83. And this on page 2 of  
5 the exhibit. Again, where were you working then?

6 A. At the Zion Nuclear Plant for...

7 Q. And you were a contractor.

8 A. Yes.

9 Q. As a contractor, is that what explains why  
10 there is a time lapse here between May of '83 and August of  
11 '83?

12 A. That is correct.

13 Q. Just very briefly, how did that work, when you  
14 are working as a contractor as opposed to a regular full-  
15 time employee?

16 A. Well, if you are working for a contractor, you  
17 are going to a site and this is not necessarily Zion  
18 stations. It is other stations. Where you accept the job  
19 or become accepted through the company that you are going  
20 to work for, whether it be DNI or Bartlett or various other  
21 companies. They will put you to work for, say, like their  
22 outages, their -- whether they are upcoming or if you are  
23 in the outage and they need more help. That is what--  
24 that will transpire. You will stay there and you will  
25 work. You work until the job is complete, you know, the

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1 outage starts winding down and, of course, they lay people  
2 off as time goes on. And then, of course, once you are  
3 laid off from that job, then you are waiting for another  
4 job. If they have one right away, that is great. If they  
5 didn't, well, then you would wait or go to work somewhere  
6 else if need be.

7 Q. Okay. And again, looking at all -- go--  
8 looking at this -- again, was the work you performed at  
9 Zion in 8/83 to 11/83, as a junior health physics tech, was  
10 that related to -- you know, was that essentially similar  
11 to the work you performed earlier between February '82 and  
12 May of '83?

13 A. Yes.

14 Q. And then I see you went -- the next entry here  
15 is for Florida Power and Light.

16 A. Yes.

17 Q. When -- and did you go down to Florida to work  
18 this job?

19 A. Yes, I did.

20 Q. When you went to Florida to work this job, did  
21 you maintain any residency in the Zion area?

22 A. Yes.

23 Q. And throughout this time period, did you  
24 consider the Zion area your home?

25 A. Yes.

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1 Q. And was -- now, I notice here, you now have  
2 the title senior health physics technician. What does that  
3 mean in comparison to junior health physics technician?

4 A. The difference between a junior and senior, as  
5 far as ANSI qualifications, would be the time in the  
6 business and the hours built up. That is the difference.  
7 And of course, once you become -- have enough time and  
8 hours, then you would become a senior health physics  
9 technician. Of course, if you passed -- the plant where  
10 you work and that if they have an entrance exam also.

11 Q. And was -- again, is the work that you did at  
12 Florida Power and Light -- is that similar to the type of  
13 work that "A" and "B" techs would perform?

14 A. Yes, majority "A."

15 Q. This would be more like "A" tech work.

16 A. Correct.

17 Q. And now, back in 19 -- and if you look in June  
18 of '84, you have come back to Zion as a senior health  
19 physics technician. And again, would that work be similar  
20 to the work "A" technicians performed?

21 A. Correct.

22 Q. At this time, was Zion an operating plant?

23 A. Yes, it was.

24 Q. And essentially, it remained an operating  
25 plant all the way through when you worked there. Correct?

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1           A.    That is correct.

2           Q.    So if you look at this, say, resume entry for  
3 June of 1984 at Zion, that the physical structure in which  
4 you were working there, performing work similar to an "A"  
5 tech, would essentially be very similar to the physical  
6 structure that existed in 1996.

7           A.    That is correct.

8           Q.    Okay. Now, in October of '84, I see you are  
9 now going to Dresden.

10          A.    That is correct.

11          Q.    All right. Dresden. Is that owned and  
12 operated by Commonwealth Edison?

13          A.    Yes, it is.

14          Q.    And this says site coordinator, lead senior  
15 health physics technician. Was that a change in position?

16          A.    Yes, it was.

17          Q.    And what was your new position?

18          A.    I supervised various senior techs and junior  
19 techs at that site for the scope of their outage work. I  
20 even -- not only when I say supervised I also interfaced  
21 with Commonwealth Edison management personnel in the  
22 radiation protection department to coordinate times of  
23 people coming in, the work they are going to do, and so on,  
24 and so forth. Also billing of Commonwealth Edison. I  
25 billed for Diversified Nuclear, who I was working for at

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1 that time.

2 Q. So as the site coordinator, you would be a  
3 point of contact between the contracting organization and  
4 the utility itself.

5 A. That is correct.

6 Q. And how -- what type of work did you perform  
7 there? Were you again doing "A" tech level work? Or what  
8 were you doing there?

9 A. Oh, yes. I -- even though I was a site  
10 coordinator and the senior health physics technician on  
11 that site, I did do work also.

12 Q. And coming out of 1985, I see you returning to  
13 Zion on April of '85.

14 A. That is correct.

15 Q. And at this point you are a senior health  
16 physics technician.

17 A. Yes, sir.

18 Q. Were you demoted from the position of site  
19 coordinator to senior health physics technician?

20 A. No, not at all. They have various people that  
21 the job might have been gone before then. I might not have  
22 been permanent with, per se, DNI. There might have been  
23 one of the upper echelon that came in to help, and I think  
24 I can name his name -- Joe Werley. He would travel around  
25 to the different sites and he would actually run a lot of

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1 for an evolution.

2 Q. In 1996, was this type of work being performed  
3 in the department you worked at Commonwealth Edison?

4 A. Yes.

5 Q. Who was -- what group or who was performing  
6 this type of work?

7 A. The ALARA group.

8 Q. Okay. And now, I notice in '85, you went now  
9 to Brian Byron.

10 A. That is correct.

11 Q. As a health physics advisor.

12 A. That is correct.

13 Q. And what is a health physics advisor?

14 A. Well, at that particular point, there was a  
15 site coordinator over there that was going to run a job.  
16 He was new with DNI and they wanted me to go over there and  
17 help make sure that -- or he could achieve orientation with  
18 all the people over there, help out with the contractual  
19 processing of the technicians onto the site because this  
20 was the first time for him as a site coordinator.

21 Q. The -- this says here helped institute the  
22 radiation protection procedure course.

23 A. Correct.

24 Q. So were you involved in training?

25 A. Yes.

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1 Q. And your next is back in -- it seems as if you  
2 went immediately from there back to Zion.

3 A. That is correct.

4 Q. As a senior health physics technician.

5 A. That is correct.

6 Q. And again, the testimony you gave earlier  
7 about the senior health physics technician, that is  
8 essentially the work you were performing at Zion.

9 A. That is correct.

10 Q. Then I notice you went to Wisconsin in 1986...

11 A. Uh-huh.

12 Q. ...as a senior health physics technician.

13 A. That is correct.

14 Q. And was that again similar work too?

15 A. Yes, it was.

16 Q. And then back to Zion, senior health physics  
17 technician again, again similar work in '86, '87?

18 A. Yes.

19 Q. And without going through each of these  
20 instances, if you could then look at the assignments you  
21 took from 1987 through 1988, they are all senior health  
22 physics technicians. Is that a -- essentially the same  
23 type of work?

24 A. Yes, with the exception of -- in '87 I was  
25 site coordinator positioned at Turkey Point.

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1 Q. And that work was similar to what you have  
2 testified a site coordinator does.

3 A. Yes.

4 Q. Now, I notice in -- on page 5 of this exhibit,  
5 in 1988 you were at La Salle, which is a Commonwealth  
6 Edison plant.

7 A. That is correct.

8 Q. And now it says health physics liaison. What  
9 was that job?

10 A. That was basically just like the ALARA job at  
11 various plants. I would interface with the contractor,  
12 station management, and also station -- the Commonwealth  
13 Edison station management, and help plan the evolutions  
14 out. I would also do various surveys. If there were any  
15 contractual problems between the contractors and the Edison  
16 employment, I would act as a go-between.

17 Q. And again in '88, health physics supervisor in  
18 Zion -- I assume that is the same type of position you held  
19 earlier.

20 A. I was actually...

21 Q. A supervisor.

22 A. ...a supervisor at Zion at that point.

23 Q. Okay. And what was it -- what does it mean  
24 you became a health physics supervisor?

25 A. I would supervise the contractor techs that

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1 worked for DNI at Zion.

2 Q. At this point, did you actually do the tech  
3 work or were you full-time supervising?

4 A. I was a full-time supervisor, but I would  
5 always help out when needed.

6 Q. And again, coming in from 11/88 through 5/89,  
7 there's three positions, all either site coordinators or  
8 senior health physics technician. Again, the type of work  
9 you did was similar.

10 A. That is correct.

11 Q. Now, of -- at -- for Commonwealth Edison, how  
12 many of their nuclear plants did you work at?

13 A. I worked at every one except one.

14 Q. Which one was that?

15 A. Quad Cities.

16 Q. Was there any -- did working at one -- was  
17 there any overlap -- were these totally independent  
18 entities or was there any overlap of procedures or work?

19 A. No. They all had their separate procedures.

20 Q. Do you think working at their different plants  
21 assisted you, in any way, in doing your job at any one  
22 plant?

23 A. Oh, absolutely.

24 Q. Why?

25 A. Well, some are PWRs, some are BWRs. So you

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1 have boiling versus pressurized water reactors. So, yes,  
2 that helped.

3 Q. And this says -- this resume ends in -- as of  
4 8/89 through 9/20/89, health physics supervisor at Zion.

5 A. That is correct.

6 Q. And was that your last position as a  
7 contractor?

8 A. Yes, it was.

9 Q. And what happened after that?

10 A. After that, I was offered a job by  
11 Commonwealth Edison at Zion Station.

12 Q. And was this a contractor position or a full-  
13 time position?

14 A. No. That was a full-time, permanent position.

15 Q. And were references sought for you in order to  
16 obtain that job?

17 A. Yes, they were.

18 Q. Okay. And if you can look at Exhibit 2, can  
19 you identify the documents in Exhibit 2?

20 A. Yes.

21 Q. And were these some of the references or all  
22 of the references that were obtained for you for that  
23 employment?

24 A. Yes, they were.

25 Q. And looking through them, there's some

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1 descriptions -- these former supervisors -- well, first,  
2 were all the -- did the people who sign these statements,  
3 were they your former supervisors?

4 A. Dana Husta [ph] was a former supervisor and  
5 vice versa. Terry Creekmore [ph] was not a supervisor for  
6 me. Tony Hall was not a supervisor for me. Jim Ramich was  
7 a supervisor.

8 Q. And do you believe the descriptions these  
9 people gave of you are generally accurate?

10 \*\*\*

11 MR. O'MALLEY:

12 Objection, hearsay.

13 \*\*\*

14 BY MR. STEVEN KOHN:

15 Q. I mean, do these -- do the descriptions  
16 contained in these letters of reference comport with your  
17 own self-assessment of your performance?

18 \*\*\*

19 ADMINISTRATIVE LAW JUDGE:

20 You may answer it.

21 THE WITNESS:

22 Yes, I do.

23 \*\*\*

24 BY MR. STEVEN KOHN:

25 Q. And if you would please look at exhibit--

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1 Joint Exhibit 3, can you identify this document?

2 A. Yes.

3 Q. And what is this?

4 A. This was a letter from Professional Placement  
5 that have -- they evaluated the recommendations and they  
6 are a -- find that they were impressed with the previous  
7 experience and they offered me a position as an engineering  
8 assistant in the radiation protection department at Zion...

9 Q. And...

10 A. ...Nuclear Station.

11 Q. ...did you accept that position?

12 A. Yes, I did.

13 Q. And was that -- what level were you hired  
14 into?

15 A. That was a level 5.

16 Q. Okay. And if you would now please look at  
17 Exhibit # -- Joint Exhibit #4.

18 \*\*\*

19 ADMINISTRATIVE LAW JUDGE:

20 Mr. Kohn, do you intend to offer these all the end  
21 or what?

22 MR. STEVEN KOHN:

23 These are Joint Exhibits which were already  
24 admitted.

25 ADMINISTRATIVE LAW JUDGE:

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1           These are all joint?     Oh, I thought they were  
2           Claimant.     Okay.     They are accepted then if they  
3           are joint.

4     MR. STEVEN KOHN:

5           Thank you, Your Honor.

6                                   \*\*\*

7     BY MR. STEVEN KOHN:

8           Q.     And if you -- could you please look at Joint  
9     Exhibit #4?     And what is this document?

10          A.     This is a document to a Mr. Joyce regarding my  
11     ANSI qualifications.

12          Q.     And does it -- were you ANSI-qualified at this  
13     time?

14          A.     Yes.

15          Q.     And if you turn page 2, that means you had  
16     over four -- on page 2 you either exceeded four years  
17     experience or 8,000 hours.

18          A.     Oh, yes.

19          Q.     And in fact, were you technically ANSI-  
20     qualified prior to even applying at Plant Zion?

21          A.     Oh, yes.

22          Q.     And why did you have to get officially ANSI-  
23     qualified at this time?

24          A.     To become a supervisor.

25          Q.     Okay.     And were you -- did you receive a

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1 promotion in or about May of 1991?

2 A. Yes. I believe it was January the 7th or  
3 1991.

4 Q. Okay. And what was that?

5 A. The radiation protection department  
6 interviewed me to take the job as a radiation protection  
7 supervisor.

8 Q. And did that include a level increase in terms  
9 of your grade there?

10 A. Yes, it did.

11 Q. And what level did you move to?

12 A. Level 6.

13 Q. Was your experience as a contractor useful to  
14 you in performing your job as a radiation protection  
15 supervisor?

16 A. Absolutely.

17 Q. Did other supervisors in your department share  
18 that experience?

19 A. I believe that none of the supervisors that  
20 were supervisors when I was there ever worked as a contract  
21 technician. Some of them have worked as a bargaining unit  
22 employee so they did some hands-on work. But as far as  
23 other plants, not that I am aware of.

24 Q. And was that level of experience useful in  
25 performing your job as a supervisor?

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1 A. Absolutely.

2 Q. And how many union techs did you have to  
3 supervise?

4 A. Approximately 30 to 34.

5 Q. And would you also have any responsibilities  
6 over contractors who may come in?

7 A. Yes.

8 Q. And during a major outage, how many  
9 contractors may be hired in to work with -- under the  
10 control or direction of the radiation protection  
11 department?

12 A. It would vary from outage to outage. I would  
13 say anywhere from 30 to 60...

14 Q. And did your...

15 A. ...contract...

16 Q. Did your -- I'm sorry.

17 A. Contract technicians.

18 Q. Okay. Thirty to 60. And did your experience  
19 as a contractor help you in being able to properly  
20 supervise that work?

21 A. Yes, absolutely, because I have done it prior  
22 before.

23 Q. Now, you have heard testimony concerning  
24 your -- from other witnesses that you would sometimes be  
25 assigned hot jobs.

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1 A. Yes.

2 Q. Was that correct testimony?

3 A. Yes, it was.

4 Q. And what was your understanding of a hot job?

5 A. That was a job that was a high risk. There  
6 could be high-risk meaning from either contamination,  
7 radiation, the potential for something to happen that could  
8 have been out of the ordinary, time-consuming, attention-  
9 to-detail type job.

10 Q. Was the steam gasket generator job a hot job?

11 A. Yes.

12 Q. Did your work as a contractor help you in  
13 being able to perform or supervise hot jobs?

14 A. Yes, it did.

15 Q. Now, did -- when you would work on a hot job,  
16 was that strictly behind the desk or was it in the field or  
17 both?

18 A. It would be both, but mostly you would work  
19 supervising out in the field. You would want the hands-on  
20 type of supervision out in the field.

21 Q. And would you get dirty yourself?

22 A. Oh, yes. I would have to dress out and--  
23 absolutely -- and sometimes I performed surveys.

24 Q. And based on your perception of the allocation  
25 of hot job assignments within the radiation protection

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1 department when you were a supervisor, what was your  
2 perception of how -- you know, of whether you would be  
3 assigned those types of positions?

4 A. I was asked more than other people to accept  
5 the responsibility for these types of jobs.

6 Q. And did you accept that responsibility?

7 A. Yes.

8 Q. Now, as I understand it, you started working  
9 for Commonwealth Edison on December 11, 1989.

10 A. That is correct.

11 Q. Prior to that, had you ever been terminated  
12 for cause from any position?

13 A. No.

14 Q. Had you ever been requested to submit a  
15 resignation because you were going to be terminated for  
16 cause?

17 A. No.

18 Q. As -- when you became an employee at  
19 Commonwealth Edison, did the company make an investment in  
20 you?

21 A. Yes.

22 Q. And can you describe the investment they made  
23 in you?

24 A. Well, in the training -- various training  
25 programs -- in fact, a lot of training programs. Of

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1 course, an investment was also geared by the experience  
2 that you have or -- you know, to show -- what you have  
3 showed.

4 Q. In terms of training, I would like you to turn  
5 to Complainant's Exhibit 1. And my first question is, can  
6 you identify these documents?

7 A. Yes, I can.

8 Q. And what are these documents?

9 A. These are various training certificates that I  
10 had completed.

11 Q. Now, did there come a time after your  
12 discharge you requested your personnel file from  
13 Commonwealth Edison?

14 A. Yes.

15 Q. And were you given a document that purported  
16 to be that file or were you given material that purported  
17 to be the contents of that file?

18 A. Yes, some.

19 Q. Did you believe that that material given to  
20 you was complete?

21 A. Absolutely not.

22 Q. And were notifications of all your trainings  
23 in that file?

24 A. No.

25 Q. And in addition to certificates, did you

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1 undergo any other type of trainings in which a certificate  
2 would not be given?

3 A. Yes.

4 Q. And to the best of your knowledge, would  
5 Commonwealth Edison make recordations of these trainings?

6 A. Some they would. Some they wouldn't.

7 Q. And when you saw that material, which you were  
8 told was your personnel file, was there any document in  
9 there that listed the trainings you had undergone but for  
10 which no certificates had been given?

11 A. Not to my knowledge.

12 Q. And when you say not to your knowledge, you  
13 looked at that.

14 A. Yes.

15 Q. Was it in there?

16 A. No.

17 Q. It was not in there.

18 A. No.

19 Q. In looking at Exhibit 1, if we can go through  
20 that -- and let's look at page 1. Did you, in fact,  
21 undergo this training?

22 A. Yes, I did.

23 Q. Was this required or is this something you--  
24 a training you undertook voluntarily?

25 A. No. This was voluntary.

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1 Q. Okay. And going to page 2, which is  
2 introduction to power plant operations, was this training a  
3 required training or was this a mandatory training?

4 A. This was actually -- this training right here  
5 was actually the -- we did it out in a training class, but  
6 it was on a voluntary basis also.

7 Q. About how long did this training go on for?

8 A. That was one week.

9 Q. And going to page 3 of this exhibit, the  
10 scientific ecology group, was this a mandatory training or  
11 a voluntary training?

12 A. That was voluntary.

13 Q. And approximately how long did this training  
14 go on for?

15 A. One week.

16 Q. And looking at page 4 of this exhibit, again,  
17 was this a mandatory or a voluntary training?

18 A. This was actually mandatory.

19 Q. And approximately how long did this training  
20 last?

21 A. This was three days or two days.

22 Q. And looking at page 5, the PWR systems  
23 training certificate, was this mandatory or voluntary  
24 training?

25 A. I am not sure on that. I don't know if that

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1 was part of the qualifications. I don't -- I believe that  
2 was voluntary.

3 Q. But you are not quite sure.

4 A. I am not quite sure.

5 Q. And approximately how long did this training  
6 last for?

7 A. On the PWR systems, I believe it was two  
8 weeks.

9 Q. And looking at page 6, strategies for  
10 supervisors. Was that a mandatory or voluntary training?

11 A. That was mandatory.

12 Q. And how long did that last?

13 A. Approximately there were four or five one-week  
14 sessions of this or the next training. I am not sure on  
15 these two because they were both in -- with -- in regards  
16 to supervisory training.

17 Q. Okay. And you are saying the next one, that  
18 is page 7 of Exhibit 2 [sic - Exhibit 1], which is first-  
19 line supervisor training program?

20 A. Correct.

21 Q. So your -- would it be your testimony that  
22 between pages -- the two certificates on 6 and 7, that the  
23 collective time of that training was about five weeks?

24 A. For the one program probably a little bit  
25 more. It was probably more like nine weeks collectively.

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1 Q. Nine weeks collectively. And looking at  
2 Exhibit 1, page 8, was that -- the radiation detection  
3 measurement -- was that mandatory or voluntary?

4 A. That was voluntary.

5 Q. And how long did that training last?

6 A. Three days.

7 Q. And looking at the certificate from the  
8 Pacific Radiation Corporation, for a self-study in  
9 radiation protection technology -- do you see that?

10 A. Yes.

11 Q. Was that mandatory or voluntary?

12 A. Voluntary.

13 Q. And just describe briefly what you had to do  
14 to get this certificate?

15 A. This was a home-study course. They would send  
16 you tests. You would take the test after you read the  
17 chapters in the book. And finally, you would have a final  
18 exam and they send you the final exam. And if you -- upon  
19 completion of that, they would send you the certificate.

20 Q. Okay. And now, I would like you to look at--  
21 I think, Exhibit 1, pages 10, 11, and 12. Are these all  
22 interconnected or related to the same training?

23 A. Yes, they are.

24 Q. And...

25

\*\*\*

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1 MR. O'MALLEY:

2 Mr. Kohn, is this all Bremsstrahlung University  
3 commencement address? That one?

4 MR. STEVEN KOHN:

5 Yeah. Yeah. That begins on page 10. And then  
6 page 11 is the Bremsstrahlung University greeting  
7 the certificate and then there is a page 12.

8 \*\*\*

9 BY MR. STEVEN KOHN:

10 Q. Can you describe to the Court what this  
11 training was all about?

12 A. Yes. It was a course taken down in Oak Ridge,  
13 Tennessee at their universities down there. And it was a  
14 five-week course in which they went over various  
15 instrumentation, various things to do in more of the  
16 HP-type line of work.

17 Q. Health physics?

18 A. Yes.

19 Q. And was this mandatory or voluntary?

20 A. Voluntary.

21 Q. And who paid for this?

22 A. Commonwealth Edison.

23 Q. And were you -- you said this took place in  
24 Oak Ridge, Tennessee.

25 A. Yes.

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1 Q. How did you get to Oak Ridge, Tennessee?

2 A. I flew.

3 Q. And who paid for that?

4 A. Commonwealth Edison.

5 Q. About how many times did they fly you back and  
6 forth during the course of this training?

7 A. I think I flew back every weekend except for  
8 one.

9 Q. And was this a -- would -- did you view this  
10 as a difficult training exercise?

11 A. Absolutely.

12 Q. And I forgot if I asked you this, but I ask  
13 again, was it mandatory or voluntary?

14 A. Voluntary.

15 Q. Okay. And now, if you can please turn to page  
16 13 of this exhibit? And do you recognize what this was?  
17 What this document is?

18 A. Yes.

19 Q. And was this a mandatory or a voluntary  
20 training?

21 A. This was a mandatory, I believe.

22 Q. And how long did this last for?

23 A. It was in our training session out at RP, so  
24 it was mandatory. A couple of days.

25 Q. Okay. And finally, I see on page 14 of -- the

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1 last page of this exhibit, a MARC supervisory training  
2 certificate.

3 A. That is correct.

4 Q. Did you, in fact, go through MARC training?

5 A. Yes, I did.

6 Q. And approximately how long did the MARC  
7 training last?

8 A. It lasted for like three or -- I think there  
9 were like five sessions -- five sessions, one day per  
10 week -- one or two...

11 A. And...

12 Q. ...one or two days.

13 A. ...was there reading material which  
14 accompanied these sessions?

15 A. Only in books, yes.

16 Q. And did you read those books?

17 A. Yes.

18 Q. And would you do that at home...

19 A. Yes.

20 Q. ...or at work?

21 A. I would do it at both places because actually  
22 they gave us homework to do to take home.

23 Q. And you successfully completed the MARC  
24 training program.

25 A. Yes.

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\*\*\*

MR. STEVEN KOHN:

And, Your Honor, I would move for the admission of  
Exhibit 2 -- excuse me, Exhibit 1...

ADMINISTRATIVE LAW JUDGE:

1.

MR. STEVEN KOHN:

...in its entirety.

ADMINISTRATIVE LAW JUDGE:

Objection?

MR. O'MALLEY:

None whatsoever, except relevance, Your Honor.

\*\*\*

BY MR. STEVEN KOHN:

Q. Now, Mr...

\*\*\*

ADMINISTRATIVE LAW JUDGE:

Wait. I should rule on it. It is received. Okay.

MR. STEVEN KOHN:

Thank you, Your Honor.

MR. O'MALLEY:

Thank you, Your Honor.

\*\*\*

BY MR. STEVEN KOHN:

Q. Now, Mr. Robarge, you would attend trainings

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1 at -- other than these mandatory trainings at Commonwealth  
2 Edison.

3 A. Yes.

4 Q. And how often would these trainings happen?

5 A. Oh, we would have quarterly RP training. And  
6 we would have annual GSEP training. There might be some  
7 other company-mandated trainings.

8 Q. Okay. But essentially, every quarter you  
9 would attend a mandatory radiation protection training.

10 A. Yes.

11 Q. And how long would that training last for?

12 A. One week.

13 Q. And who would attend?

14 A. Supervisors and the radiation protection  
15 bargaining unit people -- union people.

16 Q. Now, there was testimony earlier in this  
17 proceeding, which I believe you may have heard about the  
18 atmosphere in these trainings.

19 A. Yes.

20 Q. Was that testimony accurate?

21 A. Oh, absolutely.

22 Q. And can you describe your own impression of  
23 the atmosphere at the trainings?

24 A. Sure. We would go out there Monday through  
25 Friday usually, and when you reported out there, you would

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1 report out there about 7:00 -- about quarter -- in the  
2 morning. About 7:15 the instructors would come up, and of  
3 course, they would kick off the day -- you know, what is  
4 going on? What happened last night? Just kick it off  
5 current news, sports, jokes -- just anything. It was a  
6 very relaxed atmosphere. They also stated that everyone is  
7 equal out there. So even though I am an RP supervisor over  
8 in the plant, that out here I was a equal like a union  
9 technician. And of course, everything that went on out  
10 there -- and they made this very explicit -- that it was  
11 kept in here.

12 Q. And was it important for the training for  
13 there to be a relaxed atmosphere?

14 \*\*\*

15 MR. O'MALLEY:

16 Objection to the extent it calls for more hearsay.  
17 And move to strike the last.

18 ADMINISTRATIVE LAW JUDGE:

19 I am going to allow the question and see where it  
20 goes.

21 THE WITNESS:

22 I think it was a real good training aid to have a  
23 relaxed atmosphere.

24 \*\*\*

25 BY MR. STEVEN KOHN:

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1 Q. Why?

2 A. I think that it made everyone feel  
3 comfortable. It cut the tension of the material that you  
4 were going to study or of the upcoming sessions of the  
5 training. Yes. I think it was a good idea.

6 Q. Okay. Did you ever participate in making a  
7 training video?

8 A. Yes.

9 Q. Was that training video approved officially by  
10 Commonwealth Edison?

11 A. I believe so. I believe it has a copyright.  
12 So, yes.

13 Q. Was that training video shown by Commonwealth  
14 Edison to employees of Commonwealth Edison?

15 A. Oh, yes.

16 Q. And what was the training video on? What was  
17 the subject matter?

18 A. The subject matter was going over, actually,  
19 procedures, radiation areas, R-key doors, various items  
20 like that.

21 Q. And based upon your knowledge -- do you know  
22 for which classes that video was prepared for?

23 A. Yes.

24 Q. What was that?

25 A. They used it for NGET.

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1 Q. And if something was used in NGET training,  
2 what -- how many employees would end up seeing that?

3 A. Well, you -- an employee would have to go  
4 through if they were "A" qualified to go in the radiation  
5 area, they would see that training video once a year. Plus  
6 of course, plus the ComEd employees and then you have all  
7 the contractual people that would come in for outages that  
8 would also have to receive NGET and they would see it.

9 Q. So every employee who had the -- who would get  
10 the NGET would have to see this video.

11 A. If they were required to have -- and I don't  
12 know if it was either an "A" card or a "B" card, but it was  
13 their distinction between being able to go into the RPA or  
14 not go into the RPA.

15 Q. Okay. Oh. So to go into the radiation  
16 protection area you would need to see this.

17 A. Yes.

18 Q. And you are just not sure about entering--  
19 whether it was required to enter the non-radiation  
20 protection area.

21 A. That is correct. I mean, it might have been  
22 shown to those people, but I know it was required for the  
23 other card.

24 Q. Okay.

25 \*\*\*

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1 MR. STEVEN KOHN:

2 Your Honor, at this time, I would like to play the  
3 video and then have it introduced into evidence.  
4 It lasts about ten minutes. And I think it will be  
5 very -- and I can -- I am going to ask the witness  
6 some questions on it. And I think it will be very  
7 significant in giving this Court a feel for the  
8 type of atmosphere that was promoted in trainings.

9 MR. O'MALLEY:

10 Objection, Your Honor.

11 ADMINISTRATIVE LAW JUDGE:

12 What is your objection?

13 MR. O'MALLEY:

14 We just were handed that late yesterday. We have  
15 not had video -- VCR facilities last night to view  
16 that. It has been produced to us after the close  
17 of discovery, after they have said all the  
18 documents they intended to rely upon. We haven't  
19 seen it, haven't had a reasonable opportunity to  
20 view it, and it is too late.

21 ADMINISTRATIVE LAW JUDGE:

22 Well, is this a Respondent video?

23 MR. STEVEN KOHN:

24 Yes, Your Honor.

25 ADMINISTRATIVE LAW JUDGE:

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1 BY MR. STEVEN KOHN:

2 Q. Now, Mr. Robarge, in the beginning of the  
3 movie the character, who is a Simpson-type character, he at  
4 one point says money and girls. Do you remember that?

5 A. Yes, I do.

6 Q. Did anyone ever come to you and state that  
7 that was wrong or inappropriate?

8 A. No.

9 Q. And at another point in the video someone says  
10 "son of a B" and it kind of blips it out. Did anyone ever  
11 come to you and ask that that get taken out of that  
12 video -- it was somehow inappropriate?

13 A. No.

14 Q. And at another point in the movie does a  
15 worker yell and utter a swear word?

16 A. Yes.

17 Q. And what was that word?

18 A. Shit.

19 Q. And did anyone ever come to you and say that  
20 that should be edited out of this film?

21 A. No.

22 Q. And to the best of your knowledge, was that  
23 movie shown in actual training classes at Plant Zion?

24 A. That is correct.

25 Q. Okay. The -- now, in addition to the company

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1 trainings, did you attend any other -- did the company pay  
2 for you to attend any other outside -- you know, out-of-  
3 state events?

4 A. Yes.

5 Q. And can you remember what they were?

6 A. I went to a health physics convention in Los  
7 Angeles, California. I went...

8 Q. And who paid for that?

9 A. Commonwealth Edison.

10 Q. And how long did that last for?

11 A. I believe it was one week.

12 Q. Okay. And any other out-of-state events?

13 A. Yes.

14 Q. And what was that?

15 A. We went -- well, about three of us went over  
16 to Palisades Nuclear Generating Station. I had the task of  
17 watching their re-rack -- Springfield Pit re-rack job and  
18 writing a report up on that because we were just going into  
19 that evolution.

20 Q. And again, who paid for that trip to  
21 Palisades?

22 A. Commonwealth Edison.

23 Q. And where is that located?

24 A. In Michigan.

25 Q. In terms of the voluntary training you

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1     undertook, did that help you in performing your duties as a  
2     radiation protection supervisor?

3             A.    Yes.

4             Q.    And can you explain briefly how?

5             A.    Well, the different trainings would help in  
6     the areas of whether it be instrumentation because I was  
7     instrumentation coordinator at one point. Also the  
8     computers, the PC, taking a course on that to enhance my  
9     knowledge on a PC, which, of course, I was on a computer at  
10    the desk and had to use a computer for various GSEP events  
11    if any occurred or for practice sessions. It just helped  
12    the overall knowledge as a supervisor for working at  
13    Commonwealth Edison.

14            Q.    Now, when you became a supervisor in the  
15    radiation protection department, would you be given  
16    annual -- or would you be given periodic performance  
17    reviews?

18            A.    Yes.

19            Q.    And on what -- how often were those reviews  
20    given?

21            A.    Yearly to every year-and-a-half.

22            Q.    And when you received a -- when you obtained a  
23    copy of your personnel file after you were discharged, did  
24    you review that file to see if it had copies of your annual  
25    reviews?

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1 A. Yes, I did.

2 Q. And did it?

3 A. No, it did not.

4 Q. And to the best of your recollection, how were  
5 you reviewed?

6 A. M.E.

7 Q. And what did that mean?

8 A. Meets expectation, never below.

9 Q. And did you ever receive what might be -- what  
10 is known as a merit pay increase?

11 A. Every year. Some -- every year.

12 Q. And would merit pay increases be tied to the  
13 performance review?

14 A. Absolutely.

15 Q. And did you -- when you obtained a copy -- or  
16 when you looked at what purported to be your personnel file  
17 after you left or you -- or excuse me, you obtained the  
18 documents that they -- you were told were in it, was there  
19 information in there concerning your annual merit pay  
20 increases?

21 A. No.

22 Q. And did you ever receive a merit pay increase  
23 more than once a year?

24 A. I believe on two occasions I did.

25 Q. And that would mean you -- in one year you

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1 received two merit pay increases...

2 A. That is correct.

3 Q. ...within a 12-month period.

4 A. That is correct.

5 Q. Would you please look at exhibit -- and this  
6 is Complainant's Exhibit 2?

7 \*\*\*

8 MR. STEVEN KOHN:

9 And for the record, Complainant's Exhibit 2 is a  
10 two-page document. The first is a letter or a  
11 memo -- on the top, immediate action requested,  
12 dated June 28, 1994, to Greg Kassner from a  
13 Rick Irwin. The second is a -- what looks--  
14 appears to be a memo dated March 19, 1996, to  
15 Randy Robarge and from a Dana Sorfley [ph].

16 \*\*\*

17 BY MR. STEVEN KOHN:

18 Q. Can you identify these two documents?

19 A. Yes.

20 Q. And turning to page 1 of Exhibit 2, what is  
21 this document?

22 A. It is an adjustment to my salary.

23 Q. And do you remember obtaining this adjustment  
24 to your salary?

25 A. Yes, I do.

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1 Q. And what were the circumstances of that?

2 A. The adjustment was from selected supervisors.  
3 They did a salary review. And I was told this was on  
4 merit.

5 Q. And when you say a review of selected  
6 supervisors, did you understand that this is something that  
7 you and a selected group got but other supervisors did not  
8 obtain this? Was that your understanding...

9 A. That is correct.

10 Q. ...at the time? And you -- who informed you  
11 that this was for merit?

12 A. Mr. Kassner.

13 Q. And turning to page 2, can you identify this  
14 document?

15 A. Yes.

16 Q. And what is this document?

17 A. Another increase in salary.

18 Q. And again, do you know the -- was this a  
19 regular annual merit increase?

20 A. No. This was not a regular merit increase.

21 Q. And what was it then?

22 A. This was a market adjustment.

23 Q. To your understanding, was this based on merit  
24 or inflation?

25 A. I think that was inflation. I am not -- I

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1 don't know -- I -- you know, they put congratulations and I  
2 was told not to tell anyone else about it. So I don't  
3 know.

4 Q. Okay. So at the time you received this you  
5 were told not to tell other people you received this  
6 adjustment.

7 A. Yeah. They said don't show it around.

8 Q. And did you receive this on or about March 19,  
9 1996?

10 A. Yes.

11 Q. And...

12 \*\*\*

13 BY MR. STEVEN KOHN:

14 Your Honor, I move for the admission of  
15 Complainant's Exhibit 2, both pages.

16 ADMINISTRATIVE LAW JUDGE:

17 Any objection?

18 MR. O'MALLEY:

19 No objection, Your Honor.

20 ADMINISTRATIVE LAW JUDGE:

21 Hearing none, Claimant's Exhibit 2 is received and  
22 is now part of the record.

23 \*\*\*

24 BY MR. STEVEN KOHN:

25 Q. And, Mr. Robarge, looking at page 2 of 2, was

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1 this market adjustment on March 19, 1996 -- did you obtain  
2 this within the 12-month period of your discharge?

3 A. Yes, I did.

4 Q. Okay. And would you please turn to Exhibit 3?

5 \*\*\*

6 MR. STEVEN KOHN:

7 And for the record, Exhibit 3 is a two-page  
8 document consisting of a certificate that says a  
9 pat on the back. Page 1 is dated March 26, 1991,  
10 and page 2 is dated April 3, 1995.

11 \*\*\*

12 BY MR. STEVEN KOHN:

13 Q. Can you identify page 1 of Exhibit 2 [sic-  
14 Exhibit 3]?

15 A. Yes.

16 Q. And what is this?

17 A. This is a -- a pat on the back is a job well-  
18 done and the owner, whoever signed it, wrote it out to  
19 thank you for all the help and he wanted to recognize it  
20 and have the station recognize it.

21 Q. And was this posted anywhere on-site?

22 A. Yes.

23 Q. And where would it be posted?

24 A. They would post it at the entrance to the  
25 service building area.

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1 Q. So employees walking by would see this.

2 A. Yes.

3 \*\*\*

4 MR. STEVEN KOHN:

5 Your Honor, I move for the admission of Exhibit 3.

6 ADMINISTRATIVE LAW JUDGE:

7 Objection?

8 MR. O'MALLEY:

9 Your Honor, will you allow any voir dire of  
10 exhibits like this?

11 ADMINISTRATIVE LAW JUDGE:

12 Do you have a question on voir dire? Go ahead.

13 MR. O'MALLEY:

14 Thank you.

15 \*\*\*

16 DIRECT EXAMINATION  
17 [As to Authenticity]

18 BY MR. O'MALLEY:

19 Q. Who is the signature of the submitter on the  
20 March 26 and the April 3, 1995, submitter? The March 26,  
21 1991, and the April 3, 1995?

22 \*\*\*

23 ADMINISTRATIVE LAW JUDGE:

24 Who signed it?

25 THE WITNESS:

26 It was John Helfenberger's signature on the one  
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1 from 1991, and Joe Bonucci on the pat on the back  
2 from 1995.

3 \*\*\*

4 BY MR. O'MALLEY:

5 Q. And how do you know these two people?

6 A. They worked in different departments at Zion  
7 Nuclear Station.

8 Q. Were they friends of yours?

9 A. They were coworkers.

10 \*\*\*

11 MR. O'MALLEY:

12 I have no objection, Your Honor.

13 ADMINISTRATIVE LAW JUDGE:

14 Okay. Hearing no objections, Claimant's Exhibit 3  
15 is admitted and now part of the record.

16 \*\*\*

17 DIRECT EXAMINATION  
18 [Continued]

19 BY MR. STEVEN KOHN:

20 Q. Mr. Robarge, when you were given documents  
21 that purported to be taken from your personnel file, were  
22 these pats on the back in there?

23 A. No.

24 Q. Mr. Robarge, in 1996 did you engage in any  
25 activities at work which may be considered volunteer in  
26 nature?

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1 A. Yes.

2 Q. And can you please turn to Exhibit #4? Again,  
3 Complainant's Exhibit 4, which is a one-page document  
4 entitled, "Zion Health Club." Can you identify this  
5 document?

6 A. Yes, I can.

7 Q. And what is this document?

8 A. This was a letter that I typed up telling  
9 everyone that we finally worked to get this health club put  
10 in place at Zion Station. And there were various people  
11 that helped work on it. And this was actually a memo or a  
12 letter I gave out to the people in our department about  
13 joining the health club.

14 Q. And can you describe the efforts you undertook  
15 to establish the Zion Health Club?

16 \*\*\*

17 MR. O'MALLEY:

18 Objection, irrelevant.

19 ADMINISTRATIVE LAW JUDGE:

20 I will allow it. We will see the weight when it  
21 comes time.

22 THE WITNESS:

23 Yes. It was -- it took a lot of effort, not only  
24 on my part, but there was another individual,  
25 Al Roth, who really worked really hard at trying to

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1           get the station to find a place for us to put the  
2           health club and allocate the space which, of  
3           course, there is not much space -- space is so  
4           valuable at the nuclear station. And it was a lot  
5           of effort. Of course, we coordinated that with  
6           Mr. Toucan, the site VP. And he was a -- you know,  
7           a big promotor. He wanted to see it go also, so--  
8           it was a lot of effort, but it -- we finally  
9           achieved it.

10                           \*\*\*

11       BY MR. STEVEN KOHN:

12           Q.   And based upon your perception when you were  
13           working there, how was the health club received by other  
14           employees once it was established?

15           A.   Oh. Very well. And I think it brought some  
16           of the management and union people together. It was a  
17           great attitude adjustor, especially for all the long hours  
18           that you have put in at Zion Station. I think it was a  
19           real good morale booster.

20           Q.   Would both union and supervisors be able to,  
21           you know, work out together in that health club?

22           A.   Absolutely.

23                           \*\*\*

24       MR. STEVEN KOHN:

25           Your Honor, I move for the admission of Exhibit 4.

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1 ADMINISTRATIVE LAW JUDGE:

2 Do you have an objection?

3 MR. O'MALLEY:

4 No, Your Honor.

5 ADMINISTRATIVE LAW JUDGE:

6 Okay. Exhibit 4 is received and is part of the  
7 record.

8 \*\*\*

9 BY MR. STEVEN KOHN:

10 Q. And if you can look at now to Exhibit 5, which  
11 is one-page document dated April 4, 1996, to the Good Will  
12 Committee, re: Donation of funds. And again, Mr. Robarge,  
13 were you a member of the health awareness committee?

14 A. Yes.

15 Q. Was that a voluntary activity?

16 A. Yes.

17 Q. And what types of things would the health  
18 awareness committee do?

19 A. We would -- well, obviously it was to make  
20 people aware of their health, keep in good shape. We would  
21 raise money. We would donate money. So...

22 Q. Okay.

23 \*\*\*

24 MR. STEVEN KOHN:

25 I would move for the admission of Exhibit 5.

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1 ADMINISTRATIVE LAW JUDGE:

2 Objection?

3 MR. O'MALLEY:

4 Mr. Kohn, are -- is this part of the exhibits that  
5 were produced to us last week after the close of  
6 discovery?

7 MR. STEVEN KOHN:

8 No. This was produced at his Deposition...

9 MR. O'MALLEY:

10 Last week?

11 MR. GOLDBERG:

12 Last week.

13 MR. O'MALLEY:

14 Right?

15 MR. STEVEN KOHN:

16 Yeah, Monday.

17 MR. O'MALLEY:

18 Only on timeliness, Your Honor.

19 ADMINISTRATIVE LAW JUDGE:

20 Here is my problem with timeliness. I think  
21 timeliness is a two-pronged sword in this case.  
22 And so as a result of that, I am not going to  
23 entertain any objections based on timeliness.

24 MR. O'MALLEY:

25 Your Honor, hearing your ruling, I won't make any

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1 more.

2 ADMINISTRATIVE LAW JUDGE:

3 Thank you.

4 MR. O'MALLEY:

5 You're welcome.

6 ADMINISTRATIVE LAW JUDGE:

7 Exhibit 5 is received and is part of the record.

8 \*\*\*

9 BY MR. STEVEN KOHN:

10 Q. While working as a supervisor, did you work  
11 overtime?

12 A. Yes.

13 Q. And can you describe to the Court how much  
14 overtime you worked, say, in the years 1992, '93, '94, '95,  
15 and '96?

16 A. A lot more than the average 40-hour week. We  
17 had many big outages during those years and just tons and  
18 tons of overtime.

19 Q. And a typical week during that period of time  
20 may consist of how many work hours?

21 A. During the outage?

22 Q. Yeah.

23 A. It could run anywhere from 72 to 78 hours--  
24 79 hours. But there was a NOD put on so you couldn't go  
25 over 79 hours.

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1 Q. Can you please look at Exhibit #6? And what  
2 is this document?

3 A. This document is a list of management  
4 individuals that worked in the RP department or the GSEP  
5 for Lee Lanes for -- GSEP that worked in the department--  
6 a list of overtime hours that people would work. And that  
7 would be published every two weeks.

8 Q. And it says on the top of it...

9 \*\*\*

10 MR. STEVEN KOHN:

11 And, Your Honor, for the record, Exhibit 6 is a  
12 one-page document. It says, "Health physics  
13 management overtime hours YTD through December 10,"  
14 and it has a listing of names.

15 \*\*\*

16 BY MR. STEVEN KOHN:

17 Q. Do you know what year this related to?

18 A. It was either '95, I believe. I believe it  
19 was in '95. I couldn't be certain on that for there is no  
20 date on it.

21 \*\*\*

22 ADMINISTRATIVE LAW JUDGE:

23 And who prepared this?

24 THE WITNESS:

25 That was prepared by timekeeping because I would go

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1 up and get this every two weeks from a  
2 gentleman -- and I forgot his name.

3 ADMINISTRATIVE LAW JUDGE:

4 So this came basically through the company. It  
5 wasn't a creation of...

6 THE WITNESS:

7 No. That came through the company.

8 ADMINISTRATIVE LAW JUDGE:

9 ...you for this hearing.

10 THE WITNESS:

11 That is correct.

12 ADMINISTRATIVE LAW JUDGE:

13 Okay.

14 \*\*\*

15 BY MR. STEVEN KOHN:

16 Q. And why would you go up every few weeks and  
17 get this document?

18 A. For overtime for the supervisors.

19 Q. And I notice in looking at -- and did you do  
20 this often, go up every two weeks and get a document like  
21 this?

22 A. Yeah. That was one of my assigned projects.

23 Q. And I notice in looking at this, you are third  
24 to the top on total overtime hours.

25 A. Yes.

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1 Q. Were -- over the years, were other sheets like  
2 this produced?

3 A. I don't -- I -- for management, I couldn't  
4 tell you because I -- I have only gotten a couple years'  
5 worth of them. For a bargaining unit, yes.

6 Q. Okay. For management, what years were they  
7 doing this for management?

8 A. Well, the last two years, I was -- or the last  
9 year-and-a-half, I was watching this. But prior to that, I  
10 am sure they had these sheets, but I don't...

11 Q. Okay. When you were watching this, do you  
12 know where you were to the top on each of the sheets as  
13 they would come out?

14 A. Well, sure. It would be similar to, you know,  
15 the other supervisors. And we tried to create a balancing  
16 act or tried to.

17 Q. Okay. So in looking at this, would this be  
18 accurate to say that as of December 10 of the year this was  
19 made you put in a total of 795 hours of overtime?

20 A. That is correct.

21 \*\*\*

22 MR. STEVEN KOHN:

23 Your Honor, I move for the admission of Exhibit 6.

24 ADMINISTRATIVE LAW JUDGE:

25 Any objection?

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1 MR. O'MALLEY:

2 Just as to relevancy, Your Honor.

3 ADMINISTRATIVE LAW JUDGE:

4 Okay. I will take that into consideration.  
5 Claimant's Exhibit 6 is received and is now part of  
6 the record.

7 MR. STEVEN KOHN:

8 Thank you, Your Honor.

9 \*\*\*

10 BY MR. STEVEN KOHN:

11 Q. Now, Mr. Robarge, I would like you to look at  
12 Complainant's Exhibit #5. Okay. I'm sorry. Joint Exhibit  
13 #5.

14 \*\*\*

15 ADMINISTRATIVE LAW JUDGE:

16 You fouled up my little square there.

17 MR. STEVEN KOHN:

18 I'm sorry.

19 ADMINISTRATIVE LAW JUDGE:

20 I have this magic system of keeping track of -- in  
21 my notes where what exhibits were counted. It is  
22 the only place I use this square -- see -- and now  
23 I have -- I have to put an extra list. Go ahead.

24 \*\*\*

25 BY MR. STEVEN KOHN:

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1 Q. Mr. Robarge, can you -- in Joint Exhibit #5,  
2 can you identify this document?

3 A. Yes.

4 Q. And what is this document?

5 A. This document is a -- what I wrote down for my  
6 daily hours.

7 Q. And would this record your regular time and  
8 overtime...

9 A. Yes.

10 Q. ...for the year 1996?

11 A. Yes.

12 Q. And is it an accurate recordation of this  
13 time?

14 A. Oh, yes.

15 Q. And if you would please turn to page 11 of 12,  
16 the 11th page of this joint exhibit? And that is the page  
17 for the month of November 1996. In looking at this  
18 document, if you can look at the date entry for  
19 November 28, 1996, which was Thanksgiving. Do you see  
20 that?

21 A. Yes.

22 Q. How many hours did you work on Thanksgiving on  
23 that date?

24 A. Twelve-and-a-half.

25 Q. Did you often have to work holidays?

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1 A. Yes.

2 Q. And would you do that for the company?

3 A. Yes.

4 Q. And turning to page 12 of 12, which is  
5 December 1996, in the far right-hand corner of that  
6 exhibit, right above the #7, there is a box and it says  
7 nights, 4.5 OT, 8 one-quarter time. Do you see that?

8 A. Yes.

9 Q. Is that the entry for December 1, 1996?

10 A. Yes.

11 Q. And that meant on that date you worked 12--  
12 how many hours did you work on December 1?

13 A. 12.5 hours.

14 Q. Okay. And now, if you would please look at  
15 Complainant's Exhibit 35.

16 \*\*\*

17 MR. STEVEN KOHN:

18 And for the record, Complainant's Exhibit 35 is a  
19 calendar for the year 1995, consisting of -- the  
20 exhibit has 12 pages, each page marked by a month  
21 of the year beginning with January.

22 \*\*\*

23 BY MR. STEVEN KOHN:

24 Q. Can you identify this document?

25 A. Yes.

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1 Q. And what is this?

2 A. This is my -- these are my hours from 1995.

3 Q. And did this accurately record the amount of  
4 regular time and overtime you worked in 1995?

5 A. Yes.

6 Q. And calling your attention to the month of  
7 December 1995, which is page 12 of Exhibit 35...

8 A. Yes.

9 Q. And I am calling your attention to the entry  
10 for December 24, 1995. Did you work on that day? It says  
11 9.5 DOT.

12 A. Yes.

13 Q. And what does DOT mean in this document?

14 A. Double overtime.

15 Q. So on Christmas Eve you worked nine-and-a-half  
16 hours.

17 A. That is correct.

18 Q. And look at the entry for Christmas Day, which  
19 would be the entry for December 25, 1995. Can you -- by  
20 looking at that can you tell if you worked on Christmas?

21 A. Yes.

22 Q. And how much time did you work on Christmas?

23 A. This three-hole punch is caught right here,  
24 but it looks like nine -- nine hours.

25 Q. The very first entry, 8 holiday -- that means

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1 officer at the station?

2 A. I believe so.

3 Q. And was -- there also be someone in the title  
4 of plant manager?

5 A. Yes.

6 Q. And would that be the highest-ranking  
7 technical person on-site?

8 A. I believe so.

9 Q. Now, in terms of this communication, the first  
10 sentence says that during the past few days, apparently  
11 Mr. Mueller has come to the attention that PIFs are not  
12 being generated when problems become known. Do you see  
13 that?

14 A. Yes.

15 Q. Was it your experience and observation that  
16 some employees would not generate PIFs when problems became  
17 known?

18 A. Yes.

19 Q. And based upon your observation and knowledge  
20 of the work, did you form an opinion as to why some  
21 employees were not generating PIFs when problems became  
22 known?

23 A. There are a couple of reasons. One, people  
24 were afraid that if they did generate a PIF, it would come  
25 back to them and they would just get it or they would never

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1 find out about what they wrote up on the PIF. And another  
2 thing would be some people were told not to generate PIFs.  
3 In fact, one I had handwritten or -- I believe I handwrote  
4 it -- was ripped up. And another thing would be -- I don't  
5 know if you would call it a chilling effort or -- people  
6 were just afraid.

7 Q. Did you write PIFs?

8 A. Yes.

9 Q. Did you, at the -- when you worked there, did  
10 you think the number of PIFs you were generating -- how did  
11 that compare, in your own mind, to the number of PIFs being  
12 generated by other employees within the department?

13 A. Oh, I was one of the top problem  
14 identification -- I guess, if you put it simple -- finders.

15 Q. And were you, yourself, ever -- did it ever  
16 cross your mind, when you were filing PIFs, that maybe you  
17 shouldn't be filing a PIF?

18 A. No.

19 Q. Now, coming to the second sentence in which  
20 Mr. Mueller writes, "To truly understand a problem and fix  
21 it, once and for all, the issue must be documented and  
22 properly dispositioned." Did you agree with that?

23 A. Yes.

24 Q. And the next sentence, "Immediate initiation  
25 of a PIF is fundamental to the corrective action process."

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1 I would say that most of the people at Zion Station  
2 would know what PIF wars are. Yes.

3 \*\*\*

4 BY MR. STEVEN KOHN:

5 Q. To your -- was there ever a -- some type of  
6 campaign by management to address, say, the "PIF war"  
7 concern to ensure that employees would file PIFs even if it  
8 meant turning in their friends or other departments which  
9 may retaliate against them?

10 A. I have never heard of any training session.

11 Q. Okay.

12 \*\*\*

13 MR. STEVEN KOHN:

14 Your Honor, I would move for the admission of  
15 Exhibit 8.

16 MR. O'MALLEY:

17 No objection, Your Honor.

18 ADMINISTRATIVE LAW JUDGE:

19 Okay. Hearing no objections, Claimant's Exhibit 8  
20 is received and is now part of the record.

21 MR. STEVEN KOHN:

22 Thank you, Your Honor.

23 \*\*\*

24 BY MR. STEVEN KOHN:

25 Q. And, Mr. Robarge, I would now like you to turn

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1 Do you see that?

2 A. Yes.

3 Q. Did you share that opinion that the immediate  
4 initiation of a PIF was fundamental to the corrective  
5 action process at Plant Zion?

6 A. Absolutely. It is -- yes.

7 Q. Have you -- you have heard testimony about a  
8 concept known as PIF wars.

9 A. Yes.

10 Q. Was that something that, you know, that  
11 every -- that all -- everyone who, to your knowledge, all  
12 the employees at Plant Zion have heard of that concept or  
13 had somehow discussed it among themselves?

14 A. Oh, yes.

15 Q. I mean, if you used the word PIF war in any  
16 conversation with a Zion employee, would you ever get a  
17 blank stare like what are you talking about?

18 \*\*\*

19 MR. O'MALLEY:

20 Objection to the extent it calls for hearsay.  
21 Relevancy.

22 ADMINISTRATIVE LAW JUDGE:

23 Okay. I understand the question. Go ahead and  
24 answer it.

25 THE WITNESS:

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1 and practices at the time -- and this I am talking June  
2 1996 through December 1996 -- would your manager be  
3 informed of the contents of a PIF?

4 A. Yes. He was on the PIF committee.

5 Q. And is -- barring an immediate notification  
6 through a phone call or some other type of immediate  
7 notification, approximately how long would it take for your  
8 manager to be aware of your PIF?

9 A. Depending upon what shift you are working it  
10 could take a matter of hours or one day.

11 Q. Is there anything in the PIF procedure which  
12 required you to provide any notification to your manager,  
13 you, as the supervisor, either before you initiated a PIF  
14 or after you initiated a PIF?

15 A. No.

16 Q. If you -- based upon your knowledge of how  
17 Plant Zion operated, if your input was sought to revise  
18 these procedures, would you recommend placing in them--  
19 into these procedures, a requirement for the reporting  
20 supervisor to notify the manager either before a PIF was  
21 filed or shortly thereafter?

22 \*\*\*

23 MR. O'MALLEY:

24 Objection, foundation. It calls for speculation.

25 ADMINISTRATIVE LAW JUDGE:

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1 I will take the answer to it. It's overruled.

2 THE WITNESS:

3 Absolutely not. You have a balancing act there.  
4 And if I had to take it to a manager, number one, I  
5 might not -- I might not write that problem. I  
6 might not write that problem. The process is used  
7 to go through as little amount of people as you can  
8 in order to initiate that PIF or send it off.

9 \*\*\*

10 BY MR. STEVEN KOHN:

11 Q. And why would that -- why would a process,  
12 which requires you to go through as little amount of people  
13 as possible to participate in the PIF process, why would  
14 that be desirable?

15 \*\*\*

16 MR. O'MALLEY:

17 Same objection.

18 ADMINISTRATIVE LAW JUDGE:

19 Okay. Overruled. Go ahead.

20 THE WITNESS:

21 It would be, well, a chilling effect on the  
22 individual who was filing a PIF.

23 \*\*\*

24 BY MR. STEVEN KOHN:

25 Q. Why?

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1           A.    The more people you go through -- he might  
2 talk you out of writing the PIF. He might use it as a--  
3 just an action to retaliate against you, make you do  
4 different things, maybe give you a -- the worst job  
5 assignment. I mean, it could be used as just a overall  
6 chilling effect. I mean, people write these procedures,  
7 especially on the PIFs, to the nature of it, to find  
8 problems, to make the plant take care of those problems, to  
9 trend problems. That is what the PIF process is for.

10           Q.    When you worked at Zion prior to your  
11 discharge, did you ever violate these PIF procedures?

12           A.    Not to my knowledge.

13           Q.    When you -- did there come a time -- from time  
14 to time, would you not notify Mr. Strodl of PIFs you filed?

15           A.    No.

16           Q.    Pardon?

17           A.    I am sorry. I didn't understand.

18           Q.    Okay. From time to time, when you filed the  
19 PIF...

20           A.    Right.

21           Q.    ...would you not notify Mr. Strodl?

22           A.    No. I would not notify him.

23           Q.    Was that consistent with these PIF  
24 regulations?

25           A.    Yes, absolutely.

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1 Uh-huh.

2 MR. STEVEN KOHN:

3 ...which Respondent is going to be calling. So

4 I -- I don't want to waste any more time on this.

5 Okay.

6 \*\*\*

7 BY MR. STEVEN KOHN:

8 Q. Mr. Robarge, would you please look now at what  
9 has been marked as Joint Exhibit 8? And can you identify  
10 Joint Exhibit 8 for the record?

11 A. Yes.

12 Q. And what is Joint Exhibit 8?

13 A. This is a computer-generated form of a problem  
14 identification form.

15 Q. Are these some of the PIFs you filed in 1996?

16 A. Yes.

17 Q. This records a number of PIFs commencing with  
18 the 4th of June 1996, on page 1, and on page 25, there is a  
19 PIF with the date December 2, 1996.

20 \*\*\*

21 MR. O'MALLEY:

22 What page, Mr. Kohn?

23 MR. STEVEN KOHN:

24 That is the last page of the exhibit, page 25 of 25  
25 of Joint Exhibit 8.

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1 THE WITNESS:

2 Yes.

3 \*\*\*

4 BY MR. STEVEN KOHN:

5 Q. And have you had an opportunity to review this  
6 document?

7 A. The PIFs?

8 Q. Yes.

9 A. Yes. I reviewed the PIFs.

10 Q. Do you know whether this document contains a  
11 recordation of all the PIFs you filed during -- between the  
12 4th of June 1996, and December 2, 1996?

13 A. Well, no, I do not.

14 Q. And did you file or participate in working on  
15 PIFs that may not record your name as written by? And  
16 again, I am looking at the written by on the top left-hand  
17 corner of Exhibit 8 on page 1.

18 A. Yes.

19 Q. Do you see that thing written by R. Robarge?

20 A. Yes.

21 Q. Might you have worked on some PIFs but they  
22 not have your name on it?

23 A. Absolutely.

24 Q. And why would that happen?

25 A. Two reasons. I could have been out in the

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1 plant and I have called up to desk supervisor and  
2 immediately say write a PIF and which I have done. And the  
3 supervisor on the desk obviously will be the written by or  
4 originator. I will be the person acknowledgeable of.

5 Q. Okay. To the best of your knowledge, if you  
6 can review this document, were the PIFs you filed between  
7 June 4, 1996, and December 2, 1996, what I am calling  
8 safety-related? Were they?

9 A. Yes.

10 \*\*\*

11 MR. O'MALLEY:

12 Objection to the form.

13 ADMINISTRATIVE LAW JUDGE:

14 I didn't understand your objection.

15 MR. O'MALLEY:

16 What he calls safety-related, I don't know he would  
17 get him to testify to what Mr. Kohn calls...

18 ADMINISTRATIVE LAW JUDGE:

19 I will take it as a foundation question.

20 MR. O'MALLEY:

21 Okay.

22 ADMINISTRATIVE LAW JUDGE:

23 And go from there.

24 \*\*\*

25 BY MR. STEVEN KOHN:

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1 Q. Were these safety-related?

2 A. Yes.

3 Q. Now, extremely briefly, so we can move through  
4 this, would you please go through them one by one and just  
5 explain for the record why you would believe this was  
6 safety-related -- each PIF? And if you could do it in just  
7 one or two sentences.

8 A. Sure.

9 Q. And just give the date and then identify.

10 A. Do you want the date or the page number of the  
11 PIFs?

12 \*\*\*

13 ADMINISTRATIVE LAW JUDGE:

14 Start 1 of 25. That will be fastest and then give  
15 the date...

16 THE WITNESS:

17 All right.

18 ADMINISTRATIVE LAW JUDGE:

19 ...and then tell what it was and say why it was  
20 safety.

21 THE WITNESS:

22 Well, 1 of 25, which was June 4, 1996, scaffolding  
23 was found outside of a RPA. 2 of...

24 MR. STEVEN KOHN:

25 And what...

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1 ADMINISTRATIVE LAW JUDGE:

2 What is the significance of magenta paint on it?

3 THE WITNESS:

4 The magenta paint was a -- the color paint used if  
5 there were materials in the plant we painted  
6 magenta because they were -- had fixed  
7 contamination on it. It showed -- there was a  
8 showing that a piece of material had fixed  
9 contamination.

10 ADMINISTRATIVE LAW JUDGE:

11 All right.

12 \*\*\*

13 BY MR. STEVEN KOHN:

14 Q. And that means that that was found outside of  
15 the RPA.

16 A. Yes.

17 Q. Okay. And the testimony is that RPA is the  
18 radiation posted area or radiation...

19 A. Radiologically posted area.

20 Q. Okay. And the next one?

21 A. 2 of 25 -- this had to do with a RAD monitor.  
22 Operating was working on it. They didn't -- they did not  
23 inform the RP department. So actually the monitor was out  
24 of service.

25 Q. And how would that be safety-related?

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1           A.   For monitoring of effluence in the plant,  
2 outside the plant.

3           Q.   Okay.

4           A.   3 of 25 -- that was an NRC inspection tour  
5 that went in on a tour badge that went through a high  
6 radiation door. They weren't -- they were not allowed to  
7 do that on a tour group.

8           Q.   And were you PIFFing the NRC on this one? It  
9 doesn't say that here, but to your recollection?

10          A.   I was -- wrote a problem for people not  
11 knowing, when they are on a tour group, not to go into a  
12 high-rad area and it -- yes, it was the NRC. 4 of 25--  
13 this had to do with a containment entry log R-key. It was  
14 a procedural violation of that and I had written down 910-  
15 02, safety.

16          Q.   Is this the same R-key that was in the  
17 training video?

18          A.   That is correct. 5 of 25 -- I believe 5 of 25  
19 is showing that it is a procedure deficiency. 6 of 25--  
20 we had a technician that didn't obtain iodine samples from  
21 a RAD monitor...

22          Q.   And then I see the name R...

23          A.   ...under surveillance.

24          Q.   R. Chavez.

25          A.   Yes. Robert Chavez did not obtain the Shifley

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1 air sample.

2 Q. Is he the individual who testified here  
3 earlier this morning?

4 A. Yes.

5 Q. And essentially you PIFFed him.

6 \*\*\*

7 MR. O'MALLEY:

8 Objection to the form of the question.

9 ADMINISTRATIVE LAW JUDGE:

10 Did you file a PIF on him?

11 THE WITNESS:

12 I filed a PIF because the samples were not taken  
13 out of the -- were not obtained and he was the  
14 individual who was supposed to perform that duty.  
15 Yes. I guess you -- I was PIFFing the process and  
16 him, yes.

17 \*\*\*

18 BY MR. STEVEN KOHN:

19 Q. And I also note on this, it does reference in  
20 the middle of the page on page 6, human performance.

21 A. Yes.

22 Q. And if you come down to the bottom, it says  
23 under corrective actions, it says, "Counseled the RP tech,"  
24 on the bottom, number 1. Do you see that?

25 A. Yes.

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1 Q. Did you counsel Mr. Chavez on this matter?

2 A. No, I did not.

3 Q. Do you know who did?

4 A. No, I do not.

5 Q. And was this safety-related?

6 A. Yes, it was.

7 Q. Why?

8 A. Because of the -- again, the -- pulling the  
9 samples, it is a tech spec requirement. You have to obtain  
10 samples -- tech spec RAD monitor. 7 of 25 -- I believe it  
11 goes along from a following -- previous page.

12 \*\*\*

13 ADMINISTRATIVE LAW JUDGE:

14 A previous page?

15 THE WITNESS:

16 Yeah. 8 of 25 -- this was a safety-related problem  
17 because the wireless remote unit that monitored the  
18 dosimetry of -- that monitored the dose of the  
19 steam generator workers was breaking down. So  
20 therefore, obviously, there was a potential of  
21 something happening.

22 \*\*\*

23 BY MR. STEVEN KOHN:

24 Q. Okay.

25 A. 9 of 25 -- a bag of RAD material was found

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1     labeled improperly.     The   dose rates depict what we had to  
2     do.

3             Q.   And again,   why    would   that   be safety-  
4     significant?

5             A.   Exposure to an individual when they are trying  
6     to get the material out of the area.   Next one is 10 of  
7     25 -- Coke can found in the aux building.   Obviously there  
8     was no eating, drinking, or smoking because of...

9                             \*\*\*

10    ADMINISTRATIVE LAW JUDGE:

11             Ingestion.

12    THE WITNESS:

13             Thank you -- from eating food or drinking liquid.

14                             \*\*\*

15    BY MR. STEVEN KOHN:

16             Q.   Would taking -- or would consuming food in  
17     this area -- is that a serious problem?

18             A.   Yes.

19             Q.   Why?

20             A.   The potential   is there   for contamination to,  
21     of course,   come on the food or the drink, as this was, and  
22     be ingested.

23             Q.   Were there strict requirements as to where you  
24     could consume food at Plant Zion?

25             A.   Oh, absolutely.

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1           Q.    Okay.       Thank you.       And could internal  
2 ingestion of a radioactive isotope, that might be on a  
3 piece of food going into your body that way, pose a  
4 different type of a health risk than, say, contamination  
5 coming through your skin?

6           A.    Sure.       Biological.       And depending upon the  
7 type of contamination, where it was, you know, alpha, of  
8 course -- alpha doesn't go through your skin, but when  
9 ingested, it can be very, very harmful. So...

10          Q.    Were there -- was alpha contamination present  
11 at Plant Zion?

12          A.    Yes.

13          Q.    And in terms of the detectors you had at Plant  
14 Zion, could -- if someone had some contamination, say, on  
15 their clothing or on their external skin, could you,  
16 through a detector, monitor that or find it?

17          A.    For alpha?

18          Q.    Just for any form of radioactive contamination  
19 if it was on the...

20          A.    Yes.

21          Q.    ...external of their skin.

22          A.    Yes.

23          Q.    And what about if it was ingested? Did you  
24 have monitors that could detect internally ingested  
25 radioactive material?

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1 A. Yes.

2 Q. And were those types of monitors more -- you  
3 know, frequently used or less frequently used?

4 A. Less frequently used because -- just less  
5 frequently used.

6 Q. It is just -- okay.

7 A. 11 of 25 -- two loads of patent scaffolds were  
8 found outside of the, I believe -- were found outside of  
9 the RPA. But I believe in this one it was found that an  
10 instrument was put together wrong.

11 Q. What does that mean?

12 A. It was an instrument malfunction. I believe  
13 they -- through this -- through this process which -- of  
14 writing this PIF, found out that an instrument, a RAM-100,  
15 I believe the instrument was called, was put on -- there  
16 was a piece that was put on backwards which caused static  
17 which -- and gave erroneous readings. Therefore a training  
18 session, I believe, it states in here -- and I am not  
19 correct, but...

20 Q. So is that your...

21 A. A training session was installed because of  
22 the problem with the instruments.

23 Q. Okay. And the next one?

24 A. 12 of 25 -- operating removed a charcoal  
25 filter without an RWP request.

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1 Q. And why would that be safety-significant?

2 A. Going in there and doing work that obviously  
3 is not in the RWP.

4 Q. Okay.

5 A. 13 of 25 -- have a ventilation, steam  
6 generator shield doors -- they were coming apart. They  
7 were worn very badly. That is significant, obviously,  
8 because of the evolutions taking place inside of the steam  
9 generator. More contamination can fall out onto the  
10 platform in which the workers are working on.

11 Q. Okay.

12 A. 14 of 25 -- R-key door violation. I  
13 believe -- pass position -- yeah, it was in the pass  
14 position. That was a repair problem. 15 of 25 -- bus  
15 outage -- they took out the air conditioning. The bus  
16 outage which eliminated the electricity was out on the air  
17 conditioning, which made the RP office hot and, of course,  
18 took out some RAD monitors, which it is explained in here.

19 Q. And what is the significance of taking out a  
20 RAD monitor?

21 A. Well, you are setting yourself up for a  
22 missurveillance -- a possible missurveillance. Just  
23 because you have to pull these Shifley's and Daily's -- so  
24 you are setting yourself up. It is better to have the RAD  
25 monitor in service than...

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1 Q. And...

2 A. ...out of service.

3 Q. And just for the record, when we are use the  
4 word RAD is that an abbreviation for radiation?

5 A. Yes.

6 Q. So your RAD monitor is a radiation monitor.

7 A. That is correct.

8 Q. Yeah. So it would be a -- okay -- and that  
9 would be used for detecting radiation.

10 A. That is correct.

11 Q. Okay.

12 A. 16 of 25 -- this was a contamination control  
13 safety problem. "N" bell of a heat exchanger was removed.  
14 It was highly contaminated. In fact, I believe -- I  
15 believe someone was contaminated on this. I am not sure.  
16 The "N" bell was not covered. And it was also -- yeah, it  
17 wasn't posted as a high-contaminated area.

18 Q. Was this a -- and in terms of posting of a  
19 high-contamination area, was there a posting issue in the  
20 steam gasket incident?

21 A. Yes.

22 Q. And this is another posting issue.

23 A. Yes.

24 Q. Do you know if anybody on this issue was  
25 subject to discipline for not properly posting a high-

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1 contaminated area?

2 A. No, I do not.

3 Q. Okay.

4 A. 17 of 25 -- high-RAD door, our HR pump room  
5 was found open.

6 Q. And is that an issue?

7 A. Yes.

8 Q. And what is the issue?

9 A. Tech spec.

10 Q. And just out of...

11 A. Oh. That was -- the door was closed. The  
12 door -- I mean...

13 Q. Is this door required to be remain -- to  
14 remain closed?

15 A. If it is a high-radiation door, yes.

16 Q. And just out of curiosity, in terms of the  
17 training video we saw, remember there was a door that was  
18 left open?

19 A. Yes.

20 Q. This -- was -- this was not the same door.  
21 Was it?

22 A. No.

23 Q. But would this be a similar type of incident,  
24 in terms of a door being left open that should be closed?

25 A. Yes. They -- yes, it was chocked open.

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1 Unless there is someone standing right there, yes, to keep  
2 positive control over the room. 8 of 25 -- I believe that  
3 was -- that is just giving us what the previous page...

4 Q. Oh. Back to page 18 of 25...

5 A. Yes.

6 Q. ...where on the bottom -- and this is, again,  
7 a door being left open. Look at the very bottom where it  
8 says, "Isolated incident, close this PIF and trend for  
9 common events."

10 A. Correct.

11 Q. Do you see that?

12 A. Correct.

13 Q. What does that mean?

14 A. They are trending this to see if it is -- if  
15 people are obviously starting to leave open high-radiation  
16 doors or chocking them open. They are trending it to see  
17 if there is a big problem with that. If there is, they  
18 will have to address it.

19 Q. Now...

20 \*\*\*

21 ADMINISTRATIVE LAW JUDGE:

22 Who wrote that?

23 MR. STEVEN KOHN:

24 Yeah.

25 \*\*\*

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1 BY MR. STEVEN KOHN:

2 Q. Did you write that?

3 A. No.

4 Q. Okay. And just also so we can have an  
5 understanding of these computer-generated forms, and if you  
6 could just go back to page 17. Which is the part that  
7 reflects what you would have entered when you wrote the PIF  
8 and which is the part that someone else as you -- as this  
9 PIF moved through the system, would have entered?

10 A. I would have entered my name, event title,  
11 system, status -- I can't read that. It is kind of hard to  
12 read. The problem description and immediate action taken,  
13 apparent cause...

14 Q. That's the parts you would have written. In  
15 terms of the...

16 A. Yes.

17 Q. ...PIF number, who gave it a PIF number?

18 A. If it was computer-generated, it automatically  
19 gave it a number. If it was handwritten you would have to  
20 take it up to the shift engineer and he would write a  
21 number on it.

22 Q. Okay. And then the stuff that comes -- if you  
23 look on this form there is a -- there seems to be almost  
24 like a line on it in the middle. And right above the line  
25 there is the word rework and there is box in which someone

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1 had typed in no. Would you have typed in no?

2 A. No.

3 Q. So someone else would put that in.

4 A. Yeah. I believe so.

5 Q. And under the box above, apparent cause--  
6 when you filed a PIF, would you be the one recording in  
7 that box?

8 A. Under -- I believe that says inappropriate  
9 actions.

10 Q. No.

11 A. I don't believe so.

12 Q. No. No. No.

13 A. Is that...

14 Q. Right above the word rework.

15 A. Oh. Apparent cause?

16 Q. Yes. Would...

17 A. I don't -- I don't believe so.

18 Q. Okay. So to the best of your recollection,  
19 that part of this form would not be filled in by you.

20 A. I don't believe so.

21 Q. Okay. And then under immediate action taken,  
22 is that the part of the PIF form which the originator--  
23 and in this case, you -- would have written?

24 A. Yes.

25 Q. Okay. Now, everything under immediate action

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1 taken, from apparent cause all the way down and  
2 including -- if you turn the page to 18 of 25, where this  
3 specific PIF ends with a thing, "Provide justification:"  
4 and, "Isolated incident," would you be the one responsible  
5 for writing any of that in?

6 A. No.

7 Q. Now, also in terms of the PIF practice, once  
8 you sent the PIF up, would -- was there any -- would you  
9 ever be -- was there a regular process where you would be  
10 notified what happened with your PIF?

11 A. Yes. You were supposed to be notified when a  
12 resolution came about. There -- you were supposed to be  
13 notified.

14 Q. Okay. Okay. And if we could now go back to  
15 page -- I think we left off on 19 of 25. And on page--  
16 actually the PIF on page 19 and 20 of Exhibit 8 -- we are  
17 going to come back to that one. So if we can just skip  
18 page 19 and 20 and go right to page 21.

19 A. 21 of 25 -- returned a RAD monitor to service  
20 without notifying the RP department. Basically when you  
21 return a RAD monitor back to service we have to ensure that  
22 it checks out okay, they do an operability check to make  
23 sure it is operating within ZRP5820-2. There is a form  
24 that is filled out. And that is a safety concern because  
25 if they return it back to service and it wasn't operable,

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1 there could be a problem, depending upon the RAD monitor.

2 Q. Okay. And page -- the next one?

3 A. 22 of 25?

4 Q. Yes.

5 A. Here they took a RAD monitor out of service  
6 without a PT14 written. Of course...

7 Q. And what does that mean?

8 A. Well, they took a radiation monitor that was  
9 monitoring some area in the plant or effluent that was  
10 taken out of service without any temporary blower hooked up  
11 or whatever our procedure would state to do for that  
12 monitor.

13 Q. Okay. And did that...

14 A. We have requirements to fulfill.

15 Q. And why would that be safety-significant?

16 A. Tech spec -- in the case -- I mean, you can go  
17 on, GSEP -- you might need that monitor or effluent, if it  
18 is an effluent monitor, areas in the plant.

19 Q. Okay. And what is the next one?

20 A. 23 of 25 -- this is another RAD monitor.  
21 Blower was found off and the cover off of it.

22 Q. And did this raise a...

23 A. Valve lineup -- they ensured that the  
24 temporary blower was removed and ensured the valve lineup  
25 was correct. So again, they didn't ensure that -- the

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1 operability of the monitor. And of course, with the cover  
2 off, it is a safety hazard.

3 Q. And finally, page 25 of 25?

4 A. Another RAD monitor out of service without  
5 notification to us.

6 Q. And that is a similar issue as you had raised  
7 in the earlier PIF.

8 A. Yes.

9 Q. Now, I would like to call your attention to  
10 the date of November 1, 1996. Did...

11 \*\*\*

12 ADMINISTRATIVE LAW JUDGE:

13 Are you still on these...

14 MR. STEVEN KOHN:

15 We will...

16 ADMINISTRATIVE LAW JUDGE:

17 ...documents here?

18 MR. STEVEN KOHN:

19 Your Honor, we will be coming back to the  
20 November 4 PIF.

21 ADMINISTRATIVE LAW JUDGE:

22 All right. Just let me note here that -- while  
23 there is 25 pages, there appear to be 20 actual PIF  
24 forms because several have carryovers onto the next  
25 page. And if anybody wants to correct me on that

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1           you are welcome to do it. All right. Go ahead.

2       MR. STEVEN KOHN:

3           Thank you.

4   \*\*\*

5       BY MR. STEVEN KOHN:

6           Q. I want to call your attention to November 1,  
7       1996. Did anything unusual happen at Plant Zion?

8           A. Yes.

9           Q. And what happened?

10          A. One individual was found to be contaminated  
11       out at the -- I believe it was the guard house. He  
12       alarmed. And of course, we sent a person out there,  
13       brought him back, and -- or he was contaminated -- he  
14       alarmed the monitors in the building -- one or the other.  
15       In any event, they found a 25K hot particle. We questioned  
16       him and he stated that he was in the IM shop. At that  
17       point, we went up there, surveyed the area, and no  
18       contamination was found.

19          Q. Okay. Now, I just want to slow down. And  
20       just so we have a clear record on what exactly happened  
21       here. This person set off an alarm somewhere.

22          A. Yes.

23          Q. Okay. Where did they set off the alarm?

24          A. The alarm was set off either at the exit point  
25       of the plant, the PM-7, or at the aux building exit. I--

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1 but I believe it was the PM-7 out by the gate house.

2 Q. And was it -- was this person, in terms of  
3 setting off this alarm, had they been walking in an area  
4 which was not part of the RPA?

5 A. Yes.

6 Q. So what happened was, this was an individual  
7 who was outside of the RPA and came upon a detector which  
8 found that this person had some form of contamination on  
9 them.

10 A. That is correct.

11 Q. Now, when someone is outside of the RPA, are  
12 they supposed to have contamination on them?

13 A. No.

14 Q. If -- in terms of when someone is exiting the  
15 RPA, are they checked for contamination?

16 A. Once they leave an RPA, you need to monitor  
17 yourself and check for contamination. Yes.

18 Q. So because in...

19 A. And also once you leave the exit place -- the  
20 plant itself.

21 Q. Okay. But when you leave the RPA and enter a  
22 non-RPA area, you are supposed to have gone through some  
23 form of detection system which would determine whether you  
24 had any form of contamination on you.

25 A. Yes.

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632

1 Q. So therefore when you entered the non-RPA  
2 area, you should not have any form of radioactive material  
3 on you.

4 A. Yes.

5 Q. So then when you -- say you were then going to  
6 leave the plant -- in leaving the plant, you should not set  
7 off an alarm.

8 A. That is true.

9 Q. Because either -- because there shouldn't be  
10 any contamination in the non-RPA area. Correct?

11 A. Correct.

12 Q. And when you were in the RP area, where there  
13 would be potential contact with contamination...

14 \*\*\*

15 MR. O'MALLEY:

16 Objection to the leading and the form of the  
17 question.

18 MR. STEVEN KOHN:

19 I can do it non-leading. I am just trying to get  
20 through it faster. I can...

21 ADMINISTRATIVE LAW JUDGE:

22 I thought it was a legitimate way to approach it.  
23 Some areas if you want to -- it is easier to go  
24 through it this way. Finish the question and try  
25 to do less leading with it.

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1 MR. STEVEN KOHN:

2 Okay.

3 \*\*\*

4 BY MR. STEVEN KOHN:

5 Q. And again, if -- when you are in the RPA area  
6 and you are leaving you should be detected -- you know, any  
7 form of contamination you have should have been detected.  
8 Correct?

9 A. When you leave an RPA -- okay -- you should  
10 monitor yourself. You should check yourself. Okay? If  
11 you are into the clean area of the plant and you are  
12 leaving the plant and, of course, you are detected with  
13 contamination on, obviously we are going to respond and  
14 find out where you were to see if we have a problem.

15 Q. Okay. And that problem could be -- at that  
16 point, it could be with -- it could have been with a  
17 monitor. It could have been, you know, with finding  
18 contamination in some physical location.

19 A. Correct.

20 Q. When you enter the RPA, do you -- does any--  
21 do you -- does anything attach to you to deal with the  
22 potential -- your -- the fact that you may come into  
23 contact with radioactive material inside the RPA?

24 A. Yeah. And if you are going into a  
25 contaminated area, you wear protective clothing.

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1           Q.    Okay.    So you   have to   wear protective  
2   clothing.    And what   type of   protective clothing was  
3   available on the site?

4           A.    Well, it would depend upon how -- what kind of  
5   contamination levels, the RWP. You can go in rubbers and  
6   gloves -- you know, the rubber boots and gloves -- into a  
7   contaminated area and walk out -- okay -- and monitor  
8   yourself as you leave. Or you could go in the full PCs.

9           Q.    Okay. And is there anything else that you get  
10   when you enter an RPA in terms of monitoring for potential  
11   exposure to radiation?

12          A.    Of course, your dosimetry.

13          Q.    Okay. And that you must wear when you are  
14   inside the RPA.

15          A.    Yes.

16          Q.    What about when you are outside the RPA? Are  
17   you required to also wear that?

18          A.    Outside of the RPA?

19          Q.    Yes.

20          A.    Once you left the site? Is that what I am  
21   understanding?

22          Q.    The RPA.

23          A.    Okay. Well, inside the RPA it would depend  
24   upon the -- of course, RWP; but you -- you always wear--  
25   we started taking home the TLDs obviously with this.

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1 Q. What does that mean?

2 \*\*\*

3 ADMINISTRATIVE LAW JUDGE:

4 What is that?

5 THE WITNESS:

6 TLD?

7 ADMINISTRATIVE LAW JUDGE:

8 Yeah.

9 THE WITNESS:

10 Thermal Luminous Dosimeter. It was a  
11 measurement -- a measuring device to detect your  
12 monthly dose that you would receive.

13 ADMINISTRATIVE LAW JUDGE:

14 Because you said that you would have to take it  
15 home with you...

16 THE WITNESS:

17 We started -- we changed things to take it home,  
18 yeah. Instead, we used to leave it on our badges,  
19 but then, of course, we started taking this  
20 dosimeter home.

21 ADMINISTRATIVE LAW JUDGE:

22 Was this to see if you were getting sources from  
23 some other place or...

24 THE WITNESS:

25 No.

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1 ADMINISTRATIVE LAW JUDGE:

2 ...from home?

3 THE WITNESS:

4 No. It was just...

5 ADMINISTRATIVE LAW JUDGE:

6 Why did you do it?

7 THE WITNESS:

8 ...changing the procedures to -- we kept the  
9 dosimeters more and that way security -- you didn't  
10 have to put in on their badge. The people just  
11 kept them home -- a procedure change was  
12 implemented.

13 ADMINISTRATIVE LAW JUDGE:

14 Oh. I see.

15 MR. STEVEN KOHN:

16 Okay.

17 \*\*\*

18 BY MR. STEVEN KOHN:

19 Q. Now, on -- what did you do on November 1, when  
20 you found this -- when it was -- did you discover it or was  
21 it reported to you?

22 A. It was reported.

23 Q. Do you remember who reported it?

24 A. I don't remember the individual. I would have  
25 to go back in the log and see who the individual actually

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1 was...

2 Q. Okay. And then...

3 A. ...who was contaminated.

4 Q. Okay. And then what did you do?

5 A. Questioned the individual, where he was. And  
6 he said he was never in the aux building, so therefore he  
7 was in a clean area. Of course, there was clean areas in  
8 the aux building too.

9 Q. Okay. Well, when he said he was never in the  
10 aux building, did that mean that day he hadn't entered an  
11 RPA area? Is that what that meant or no? What was the...

12 \*\*\*

13 ADMINISTRATIVE LAW JUDGE:

14 What is the significance of this?

15 MR. STEVEN KOHN:

16 Yeah. What is the significance...

17 THE WITNESS:

18 The significance is that the possibility of  
19 contamination in a clean area outside of an RPA.  
20 That is the significance.

21 MR. STEVEN KOHN:

22 Okay.

23 \*\*\*

24 BY MR. STEVEN KOHN:

25 Q. And then what did you do?

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1           A.    Questioned him on where he was.    And he said  
2 he had been up to the IM shop.

3           Q.    And did you go to the IM shop?

4           A.    Yes.

5           Q.    And what did you do there?

6           A.    I had a technician survey the area to ensure  
7 that, in fact, there was no contamination at the IM shop.

8           Q.    And then what did you do?

9           A.    Documented it and I believe the tech  
10 documented it and went home or went back to work.

11   \*\*\*

12 ADMINISTRATIVE LAW JUDGE:

13           You found nothing there.

14 THE WITNESS:

15           Nothing was found. I didn't see it.

16   \*\*\*

17 BY MR. STEVEN KOHN:

18           Q.    And when is the next time that this incident  
19 was called to your attention?

20           A.    November 4.

21           Q.    And as I understand it, November 1 was a  
22 Friday.

23           A.    I believe so.

24           Q.    And November 4 was the Monday.

25           A.    Correct.

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1 Q. Okay. And what happened on that Monday,  
2 November 4?

3 A. An individual, Mr. Roger Agulara [ph], came  
4 down and I don't know if he had looked over the logs or  
5 looked at the RP logs, being the RP supervisor logs, but  
6 he...

7 \*\*\*

8 MR. O'MALLEY:

9 I don't mean to interrupt, but I will have an  
10 objection as to hearsay in a moment if this  
11 narration is going where I think it is going.

12 ADMINISTRATIVE LAW JUDGE:

13 Okay. It is a hearsay alert. Go ahead.

14 MR. STEVEN KOHN:

15 Okay.

16 \*\*\*

17 BY MR. STEVEN KOHN:

18 Q. And what happened, Mr. Robarge?

19 A. Roger looked at a log. Okay? He stated that  
20 he wanted...

21 \*\*\*

22 MR. O'MALLEY:

23 Objection, hearsay.

24 THE WITNESS:

25 When we up to the IM...

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1 ADMINISTRATIVE LAW JUDGE:

2 Just a minute.

3 THE WITNESS:

4 Sorry.

5 ADMINISTRATIVE LAW JUDGE:

6 You are getting an objection, hearsay on this.

7 Okay. Were you acting in an official capacity at

8 this time to conduct an investigation as to what

9 was happening?

10 THE WITNESS:

11 I was. Yes.

12 ADMINISTRATIVE LAW JUDGE:

13 Okay. And was this investigation ultimately to

14 become a part of your report?

15 THE WITNESS:

16 I -- yes.

17 ADMINISTRATIVE LAW JUDGE:

18 Okay. He can answer the question.

19 MR. STEVEN KOHN:

20 Thank you.

21 \*\*\*

22 BY MR. STEVEN KOHN:

23 Q. And can you identify Mr. Roger Agulara?

24 A. Yes. He was up for, I believe, an SQV audit  
25 from South Texas project.

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1 Q. And what is an SQV audit?

2 A. Quality verification.

3 Q. And what did he do at South Texas, to the best  
4 of your knowledge?

5 A. He worked in RP.

6 Q. Radiation protection?

7 A. Radiation protection, yeah.

8 Q. And do you know how long he was up at Plant  
9 Zion?

10 A. I believe it was two weeks. I am not sure.

11 Q. Was...

12 A. I believe it was two weeks.

13 Q. Did he -- had he become a Commonwealth Edison  
14 employee at this time?

15 A. Oh, no. No.

16 Q. And who -- at this time, who was he an  
17 employee of?

18 A. I believe it was South Texas project.

19 Q. But he was working at this time under the  
20 direction and control of Commonwealth Edison supervisors.

21 A. Yes. While he was working, I believe  
22 Commonwealth Edison invited him up because of problems.  
23 They wanted to verify if -- to help out with problems. So  
24 I believe that is the reason he was brought up here.

25 Q. Okay. And then -- and what did Mr. Agulara

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1 report to you?

2 A. He reported that there was -- he wanted to  
3 look at the IM shop. I don't know if he went up there  
4 beforehand or he invited me up there, but he wanted to go  
5 up there because he thought there was a problem.

6 Q. And what happened next?

7 A. I went up there. We looked at test equipment  
8 and I found radioactive material outside the RPA. I  
9 immediately called the technician. And at that point, we  
10 started surveying.

11 Q. Okay. Now, tell me, to the best of your  
12 recollection, when you say I found -- where did you find  
13 this contaminated material?

14 A. Well, the contaminated material was in the IM,  
15 I will say, workshop, workbench, where the people have a  
16 long station. They keep cabinets, parts, and everything of  
17 tools in nature up in this part...

18 Q. And...

19 A. ...in the service building clean area.

20 Q. And is this the same place you had gone on  
21 Monday?

22 A. No. No. We were in the IM -- they have  
23 another -- across the hallway -- an office like, and that  
24 is where we were because I believe the individual said he  
25 was emptying the trash cans.

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1           Q.    Okay.    And the location where you were now,  
2 where you now have found contaminated material, describe,  
3 to the best of your recollection, where you found this  
4 contaminated material?

5           A.    They had a cabinet up there that they kept  
6 some gauges and tooling in. These gauges were found to be  
7 taking -- taken out of that cabinet. They were put on a  
8 lunch counter. There was a coffee pot right by there.  
9 They were on other parts of their work area, where they  
10 would work on these gauges or use them.

11          Q.    Okay.    So the gauges that had the  
12 contamination -- the gauges had the contamination in it.

13          A.    The gauges had the contamination in it and on  
14 it.

15          Q.    Okay.    And how close were those gauges  
16 physically to the coffee pot?

17          A.    A foot.

18          Q.    And did -- was there any other food on the  
19 table?

20          A.    Oh, sure. There was -- there were sandwiches.  
21 I mean, people ate there. They used it for a  
22 workbench/sandwich. I mean, they took their breaks there.  
23 They ate cookies there.

24          Q.    And was the contaminated material in a close  
25 proximity to the food?

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1 A. Well, yeah, where it could have been, yeah.  
2 Where the food was laying on the workbench -- just, yeah.

3 Q. Was the fact that this workbench was also used  
4 for lunch or for eating, did that raise a concern for you?

5 A. It raised a concern because the radioactive  
6 material was on that bench. Yes.

7 Q. Now, this -- these gauges, where did they come  
8 from?

9 A. They use these gauges at -- from various areas  
10 in the plant, mainly the auxiliary building. The -- they  
11 are test gauges to check -- they are calibrated gauges.  
12 And they would have to go out into the plant with this  
13 calibrated gauge and ensure that the other gauge was  
14 working properly or take that gauge, bring it up to the  
15 plant, up to the IM shop, test it, calibrate it, and bring  
16 it back.

17 Q. Were the -- would it be -- were these gauges  
18 that were now in the IM area -- had they, at one point,  
19 been used in the RPA area?

20 A. Yes.

21 Q. And did someone have to transport that gauge  
22 from the RP area into the non-RPA area?

23 A. Yes.

24 Q. When that gauge moved from the RPA area to the  
25 non-RPA area, which department had the responsibility for

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1 detecting whether that gauge was contaminated with  
2 radiation?

3 A. It was our responsibility to control  
4 radioactive material.

5 Q. And in terms...

6 A. The...

7 Q. ...of your best understanding of how these  
8 contaminated gauges ended up at this lunch table,  
9 essentially someone would have moved it from the RPA area  
10 into the non-RPA area. Is that correct?

11 \*\*\*

12 MR. O'MALLEY:

13 Objection to the form of the question.

14 ADMINISTRATIVE LAW JUDGE:

15 To what?

16 MR. O'MALLEY:

17 Objection to the form of the question.

18 MR. STEVEN KOHN:

19 Okay. I will rephrase. I will...

20 MR. O'MALLEY:

21 Lunch table, too, it seems that that...

22 MR. STEVEN KOHN:

23 Your Honor, could we go off the record for a  
24 moment?

25 ADMINISTRATIVE LAW JUDGE:

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1 MR. STEVEN KOHN:

2 Oh. I'm sorry.

3 \*\*\*

4 BY MR. STEVEN KOHN:

5 Q. Mr. Robarge, did you -- in your investigation  
6 of this incident, were you able to form any -- did you form  
7 an opinion as to how these gauges got on the -- into the IM  
8 shop?

9 A. Yes.

10 Q. And...

11 A. The...

12 Q. And what was that opinion?

13 A. The IMs would take some of these gauges back  
14 to the IM shop for calibration. Okay? They may be  
15 contaminated and we would tag them. All right? If -- this  
16 is what I can remember. We would tag them with a sticker.  
17 They would take them, the contaminated ones, and put them  
18 in a cabinet, a shelf and -- which was posted as an RPA.  
19 Some of those were found outside of that RPA. And after  
20 also questioning them, they also took some of those gauges  
21 and used them on the clean system on the plant on the  
22 secondary side. And of course, they have been used for--  
23 contaminated water would flow through them -- these  
24 gauges -- various gauges.

25 Q. Okay. What does that mean that these gauges

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1 were used on the clean systems on the secondary side? What  
2 does that mean?

3 A. Non-radioactive.

4 Q. And what -- is there -- is that significant?

5 A. Well, you can -- the potential for these  
6 contaminated gauges it is number one, what is inside of  
7 them -- if you hook it up to a clean system, yes, there is  
8 going to be contaminated material that could go inside. Or  
9 if there was fixed contamination on the outside of the  
10 gauge, obviously, you could -- a piece of that could come  
11 off and fall, you know, onto the clean side of the plant  
12 outside the RPA.

13 Q. And what -- once you made this -- you detected  
14 this situation, what happened next?

15 A. I called, obviously, up -- called the tech up.  
16 We checked everything out, surveyed the IM shop, posted--  
17 put tape down and posted an area where they could work on  
18 the calibration of these gauges. We talked to them about  
19 immediately taking care of the problem -- or at least, I  
20 did. I said you can't, you know -- and showed them the  
21 instructions. I said you can't do this, you can't do that.  
22 And of course, filed the PIF.

23 Q. And I would like you now to look at page 19 of  
24 Complainant's Exhibit 8. Can you identify this document?

25 A. Yes.

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1 Q. What is this?

2 A. This is a PIF, problem identification form.

3 Q. And what -- and what situation did this PIF  
4 relate to?

5 A. The items I have just talked about.

6 Q. And calling your attention -- now, in the--  
7 on page 19, where it says problem description, were you the  
8 person who typed that in what -- describing the problem?

9 A. Yes.

10 Q. Immediate -- and under the second box,  
11 immediate action taken, were you the person who typed that  
12 in?

13 A. Yes, I am.

14 Q. Under apparent cause, did you type that in?

15 A. No, I did not.

16 Q. And under rework, no, did you type that in?

17 A. I don't believe so, no.

18 Q. Now, would you please turn to page 20 of 25?  
19 And if you see event information, there is the box. It  
20 says, "Problem resolution, please close this level 4 to  
21 CAR22-96-054 as it is currently being tracked in two  
22 places." Do you see that?

23 A. Yes.

24 Q. Did you type that in?

25 A. No.

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1 Q. Okay. Now, would you please turn to  
2 Complainant's Exhibit 36?

3 \*\*\*

4 MR. O'MALLEY:

5 I don't have one, Mr. Kohn.

6 MR. STEVEN KOHN:

7 36? Complainant's Exhibit 36. No. Do they have  
8 it? Did you give it to Mr. Goldberg?

9 MS. WESTERMAYER:

10 We got it this morning.

11 MR. O'MALLEY:

12 I didn't get it. I can look on with the witness.

13 ADMINISTRATIVE LAW JUDGE:

14 You can -- do you got one there? Okay.

15 MR. O'MALLEY:

16 Can I look on with the witness?

17 MR. STEVEN KOHN:

18 And I apologize. I thought that had been  
19 distributed.

20 \*\*\*

21 BY MR. STEVEN KOHN:

22 Q. And can you -- if you can please look at  
23 page 1 of what has been marked as Complainant's Exhibit 36?

24 A. Yes.

25 Q. And look at the top of page 1 in which there

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1 is a number 229654.

2 A. Correct.

3 Q. Do you see that?

4 A. Yes.

5 Q. And on -- and then as you are aware your PIF,  
6 which was Joint Exhibit 8, was closed to CAR229654.  
7 Correct?

8 A. Correct.

9 Q. And this says corrective action record. To  
10 the best of your understanding, is this now the  
11 continuation -- the paperwork which continues your PIF?

12 A. That is correct.

13 Q. Okay. And if you look on page 1 of Exhibit  
14 36, there is a description. Does that describe your PIF?

15 A. Yes.

16 Q. And if -- under the discussion section, if you  
17 could go to the second paragraph of the discussion section,  
18 and you will see on the fourth line -- excuse me, on the  
19 third line it begins, "An RP supervisor observed a  
20 contaminated test gauge on the IM lunch table."

21 \*\*\*

22 ADMINISTRATIVE LAW JUDGE:

23 Relocate me again. Where are you?

24 MR. STEVEN KOHN:

25 Okay. This would be under the discussion

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1 section...

2 ADMINISTRATIVE LAW JUDGE:

3 Yeah. Paragraph?

4 MR. STEVEN KOHN:

5 Two.

6 ADMINISTRATIVE LAW JUDGE:

7 Okay.

8 MR. STEVEN KOHN:

9 The third line, where it reads, "An RP  
10 supervisor...

11 ADMINISTRATIVE LAW JUDGE:

12 Okay.

13 MR. STEVEN KOHN:

14 ...observed a contaminated test gauge on the IM  
15 lunch table.

16 \*\*\*

17 BY MR. STEVEN KOHN:

18 Q. Do you see that? And right after it says,  
19 "PIF 963954?"

20 A. Yes.

21 Q. Is that your PIF number for the November 4  
22 PIF?

23 \*\*\*

24 ADMINISTRATIVE LAW JUDGE:

25 Look at 19 on there.

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1 MR. STEVEN KOHN:

2 And that was page 19 of 25, Joint Exhibit 8.

3 THE WITNESS:

4 Yes.

5 MR. STEVEN KOHN:

6 Okay.

7 \*\*\*

8 BY MR. STEVEN KOHN:

9 Q. Now, coming back up to the description  
10 section, on page 1 of 36, the second sentence, it says,  
11 "This work practice increases the possibility of  
12 inadvertently transporting radioactive materials off-site  
13 and spreading radioactive contamination into clean areas."  
14 Would -- is -- would you agree with that assessment of  
15 your -- of the problem you identified in the PIF?

16 A. Absolutely.

17 Q. Now, come to the second paragraph under the  
18 discussion section. And again, if you would go to the  
19 sentence...

20 \*\*\*

21 MR. O'MALLEY:

22 If you want to move it, Mr. Kohn, I won't object to  
23 this exhibit.

24 MR. STEVEN KOHN:

25 Okay. Your Honor, I move for the admission of

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1 Exhibit 36.

2 ADMINISTRATIVE LAW JUDGE:

3 No objection? All right.

4 MR. O'MALLEY:

5 No objection, Your Honor.

6 ADMINISTRATIVE LAW JUDGE:

7 Claimant's Exhibit 36 is received and is now part  
8 of the record.

9 \*\*\*

10 BY MR. STEVEN KOHN:

11 Q. And if you see the date of this document -- if  
12 you turn to the second page, you will see approved on the  
13 bottom right-hand corner, it says 11/26/96. Do you see  
14 that date...

15 A. Correct.

16 Q. ...on page 2? Now, come up to...

17 \*\*\*

18 ADMINISTRATIVE LAW JUDGE:

19 Who signed that?

20 \*\*\*

21 BY MR. STEVEN KOHN:

22 Q. Do you recognize that signature?

23 A. On this copy I cannot make the signature out.

24 Q. Okay. Now, let's look up again on this -- on  
25 page 2. Do -- if you look at the very top under finding,

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1 it says severity level 2 for the CAR. Do you see that?

2 A. Correct.

3 Q. Based upon your knowledge at Plant Zion, do  
4 you have any impression as to what a severity level 2 CAR  
5 would mean?

6 A. Yes. It is a much higher level of scrutiny.

7 Q. Than say a normal PIF.

8 A. Yeah. That is correct.

9 Q. And under -- if you come down -- you see this  
10 section that says, "Immediate corrective actions included"?  
11 Do you see that?

12 A. Yes.

13 Q. Right here on top. And you initiated the PIF.  
14 Go the second line. Do you see the station manager,  
15 Keith Schwartz; maintenance superintendent, D. Bumm [ph],  
16 and health physics services supervisor, Walt Strodl, were  
17 notified of this event?

18 A. Yes.

19 Q. Do you see that? Were you the person who  
20 notified these three individuals of this event?

21 A. No, I did not.

22 Q. And to the best of your knowledge, were they  
23 notified through the procedures set forth in the PIF  
24 regulations?

25 A. Yes.

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1 Q. And to the best of your knowledge, was that  
2 the approved mechanism for informing these three  
3 individuals of this event?

4 A. Absolutely.

5 Q. And if you would please now turn to page 4 of  
6 Exhibit 36?

7 \*\*\*

8 MR. O'MALLEY:

9 I think I have these. Oh. This is of Exhibit 36.

10 ADMINISTRATIVE LAW JUDGE:

11 Same one.

12 MR. O'MALLEY:

13 Thank you.

14 \*\*\*

15 BY MR. STEVEN KOHN:

16 Q. And again, does the information contained on  
17 this page relate directly back to your PIF?

18 A. Yes.

19 Q. And on page 5 of this exhibit...

20 \*\*\*

21 ADMINISTRATIVE LAW JUDGE:

22 Okay. I can't read the bottom of this. I don't  
23 know if it is approved or not.

24 MR. STEVEN KOHN:

25 The handwriting, Your Honor, was on the document

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1 given to us and this is the best copy that we have.  
2 I don't know if Respondent has a better copy.

3 ADMINISTRATIVE LAW JUDGE:

4 Okay. Since it came from Respondent, if there is  
5 anything to be noted in that, I will leave it to  
6 them to get the original in. Otherwise, accept it  
7 as it is. Okay. Go ahead.

8 \*\*\*

9 BY MR. STEVEN KOHN:

10 Q. And again, page 5 of this document, does this  
11 relate back to your PIF? That is Exhibit 36.

12 \*\*\*

13 ADMINISTRATIVE LAW JUDGE:

14 The second big paragraph here?

15 MR. STEVEN KOHN:

16 Yeah. The -- well, this says put it -- if he did  
17 the -- do -- is the entire...

18 THE WITNESS:

19 Yes.

20 MR. STEVEN KOHN:

21 Okay.

22 \*\*\*

23 BY MR. STEVEN KOHN:

24 Q. Now, was corrective action taken as a result  
25 of the PIF you filed?

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1 A. Yes.

2 Q. And in reviewing Exhibit 36, can you tell the  
3 Court what corrective action was taken?

4 A. Yes. The items, of course, were removed from  
5 the IM hot shop area -- was taped off around where they  
6 were working on the test equipment. As far as the  
7 corrective actions -- is that what you are looking for too?

8 Q. Yes.

9 A. I would have to go to the -- well, they were  
10 going to buy some more equipment and maybe some more  
11 cabinets and limit some of the gauges, of course, that were  
12 going from the auxiliary building to the IM shop.

13 Q. If you look at page 4 of this exhibit, Exhibit  
14 36...

15 A. Uh-huh.

16 Q. ...where under immediate action taken...

17 A. Uh-huh.

18 Q. ...and it says, "Train all IMs on the proper  
19 use of the new test area in their shop." Do you see that?  
20 Under immediate...

21 A. Yes.

22 Q. ...action taken.

23 A. Yes.

24 Q. And it says, "Create an IM calibration  
25 facility for contaminated equipment." Do you see that?

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1 A. Yes.

2 Q. And it says, "Look at 'MM' and 'EM' for  
3 similar practices." Do you know what "MM" and "EM" are?

4 A. Yes.

5 Q. And what does that stand for?

6 A. Mechanical maintenance, electrical  
7 maintenance.

8 Q. So to your understanding, were these  
9 corrective actions taken as a result of the PIF you filed?

10 A. Yes. Yes.

11 Q. And now, if you would please look at page 1 of  
12 Exhibit 6? Oh, I'm sorry, of Exhibit 36, page 1.

13 \*\*\*

14 ADMINISTRATIVE LAW JUDGE:

15 Excuse me. What does IM stand for?

16 THE WITNESS:

17 Instrument maintenance.

18 \*\*\*

19 BY MR. STEVEN KOHN:

20 Q. So that I understand that sentence is,  
21 although this problem was found in IM, they were going to  
22 look at two other departments to see if they had a similar  
23 problem with their gauges. Correct? I mean, that is...

24 A. I'm sorry. Where did you read that from?

25 Q. Under...

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\*\*\*

ADMINISTRATIVE LAW JUDGE:

Page 4.

\*\*\*

BY MR. STEVEN KOHN:

Q. Page 4, under immediate action taken.

A. Yes.

Q. Now, if you can go to page 1 of 6 on Exhibit 36? You testified earlier that PIFs were useful for something known as trending.

A. Yes.

Q. If you can look at the first sentence of the last paragraph, where it says, "Control of radioactive materials outside the RPA is a reoccurring problem, not only at Zion, but at other ComEd nuclear sites."

\*\*\*

MR. O'MALLEY:

Objection, foundation.

ADMINISTRATIVE LAW JUDGE:

Well, he is reading from it...

MR. O'MALLEY:

Oh. Okay. I'm sorry, Your Honor. I don't have my copy in front of me.

ADMINISTRATIVE LAW JUDGE:

Okay.

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1 MR. STEVEN KOHN:

2 I understand, actually, that a copy was given to  
3 Respondent this morning.

4 ADMINISTRATIVE LAW JUDGE:

5 Did it get in a wrong book maybe?

6 MR. O'MALLEY:

7 We don't have it, Steve.

8 \*\*\*

9 BY MR. STEVEN KOHN:

10 Q. Okay. Again, looking at the bottom paragraph  
11 of Exhibit 36...

12 \*\*\*

13 ADMINISTRATIVE LAW JUDGE:

14 This happens -- get them another copy later on...

15 MR. STEVEN KOHN:

16 We will. The moment I can.

17 ADMINISTRATIVE LAW JUDGE:

18 ...when we -- who knows what has happened in the  
19 flurry, if you can do that. Go ahead.

20 \*\*\*

21 BY MR. STEVEN KOHN:

22 Q. Where it says, "Control of radioactive  
23 materials outside the RPA is a reoccurring problem, not  
24 only at Zion Station, but at other ComEd sites." Do you  
25 see that?

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1 A. Yes.

2 Q. Does this statement have anything to do with  
3 the trending issue you had earlier testified about?

4 A. Yes.

5 Q. And how does that relate?

6 A. The trending issue is -- they are saying other  
7 problems like this have occurred, so therefore these PIFs  
8 that they trended before and now they are finding other  
9 problems from the PIF that was written here.

10 Q. And in fact, your PIF was trended not only to  
11 a problem at ComEd -- at Zion Plant, but Commonwealth  
12 Edison used your PIF and put it into a larger trending for  
13 all their plants.

14 A. That is correct.

15 Q. Now, after you wrote this PIF, did anything  
16 unusual happen?

17 A. Yes.

18 Q. And what happened? Well, actually, first I  
19 want to lay one other foundation question. Prior to  
20 initiating this PIF, did you discuss this PIF with  
21 Mr. Strodl?

22 A. Prior to?

23 Q. Yes.

24 A. No.

25 Q. After initiating the PIF, did you discuss--

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1 did you inform Mr. Strodl about this PIF?

2 A. No.

3 Q. Okay. So after you initiated the PIF, what  
4 happened next?

5 A. I believe it was later that morning or the  
6 next day, I am not sure which, but it was -- I think it was  
7 later that morning. I am not sure. But Roger Agulara  
8 came down to the RP office where I was at the supervisor's  
9 desk and he said Mr. Strodl was very angry, yelling, using  
10 vulgarity about the PIF that I had written. So -- and he  
11 told me -- he says, maybe you should go down there and see  
12 what is going on. I said, yeah, I absolutely agree. So I  
13 went down to see Mr. Strodl.

14 Q. And what happened next?

15 A. As I approached his office, he was pretty  
16 angry about the PIF I wrote.

17 Q. And did he say anything to you?

18 A. There were vulgarities.

19 Q. And...

20 \*\*\*

21 ADMINISTRATIVE LAW JUDGE:

22 I want to know what he said. I don't want a  
23 characterization of -- what did you say to him and  
24 what did he say to you?

25 THE WITNESS:

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1 I can't recall.

2 ADMINISTRATIVE LAW JUDGE:

3 Well,...

4 THE WITNESS:

5 We had...

6 ADMINISTRATIVE LAW JUDGE:

7 ...think it as best as you can.

8 THE WITNESS:

9 Okay. I know that I had discussed the PIF and I  
10 know he had mentioned something about the IMs as  
11 best as I can recall.

12 \*\*\*

13 BY MR. STEVEN KOHN:

14 Q. And what was his demeanor in this meeting or  
15 interaction?

16 A. Well, he was very unprofessional. Just -- to  
17 get upset over a PIF like that for a plant safety issue, I  
18 don't know, he was red-faced. He was angry, very angry.

19 Q. And when you say he used vulgarity, today can  
20 you remember any of the words he actually used?

21 A. I...

22 \*\*\*

23 MR. O'MALLEY:

24 Objection, asked and answered.

25 THE WITNESS:

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1           It would only be a guess. I -- there were some  
2           vulgarityies.

3   \*\*\*

4       BY MR. STEVEN KOHN:

5           Q.    And how did you react to this encounter?

6           A.    I was very upset.

7           Q.    Why?

8           A.    Because I had -- finding a safety problem like  
9           that and having someone get angry, I just -- I can't  
10          understand it. I just -- after -- and with other people  
11          that were around and them hearing it, it wasn't the -- it  
12          was a -- it was -- I felt not too big. I mean, it just--  
13          it -- I didn't feel right.

14          Q.    Why?

15          A.    Because I filed a PIF. I was doing my job. I  
16          went per the procedure and now I am getting chastised for  
17          it.

18          Q.    After this encounter, did you notice any  
19          change in Mr. Strod's behavior toward you?

20          A.    Yes.

21          Q.    And what was that?

22          A.    He was cold, wouldn't talk that much to me.  
23          Just -- I don't even know if it was on a professional basis  
24          anymore. I mean, it was just -- just a cold issue.

25          Q.    And after this encounter, did you start to do

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1 something?

2 A. Yes.

3 Q. And what did you start to do?

4 A. I wrote a log.

5 Q. Prior to this encounter, had you ever written  
6 a log before like you started after this?

7 A. Not that I can recall.

8 Q. And what did you put in this log?

9 A. Various things that people stated in the log.

10 Q. What type of incidents did you record in this  
11 log you started?

12 A. Incidents of people swearing. I know, I had  
13 made a statement in there about Mr. Strodl swearing, using  
14 vulgarities, other people -- the use of language. The  
15 various things.

16 Q. And why did you start -- why did you take  
17 notes about other people's use of language?

18 A. Because I thought they were going to use this  
19 against me in some way.

20 Q. What -- use what, vulgarity against you?

21 A. No. The fact of writing a PIF and the other  
22 incidents.

23 \*\*\*

24 MR. STEVEN KOHN:

25 I was just trying to identify the exhibit number.

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1 MR. O'MALLEY:

2 While you are looking for that exhibit,  
3 Mr. Goldberg is informed that your people won't  
4 bring your experts to the Radisson where our Court  
5 Reporter is located.

6 MR. STEVEN KOHN:

7 We can go -- I suggest we go off the record.

8 ADMINISTRATIVE LAW JUDGE:

9 Well, all right. It is one minute of -- I am going  
10 to call this now. You have that document first  
11 thing in the morning. We are here at 8:00.

12 MR. O'MALLEY:

13 Thank you, Your Honor.

14 MR. GOLDBERG:

15 Thank you, Judge.

16 ADMINISTRATIVE LAW JUDGE:

17 Off the record.

18 \*\*\*

19 [Wherein, the hearing ended at 5:59 p.m. on May 19, 1998.]

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	<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	<u>COURT</u>
1	For the Complainant:					
2						
3						
4						
5	Randy Robarge					
6	by Mr. O'Malley		901			
7						
8	by Mr. S. Kohn			938		
9						
10	Allen Mosbaugh					963
11	by Mr. M. Kohn	949		1032		
12						
13	by Mr. Goldberg		1007		1037	
14						
15	For the Respondent:					
16						
17	Lester Guthrie					1071
18	by Mr. O'Malley	1046		1207		
19						
20	by Mr. M. Kohn		1146			
21						
22	Gregory Kassner					1226
23	by Mr. Goldberg	1210				
24			***			
25						
26	<u>EXHIBIT</u>	<u>FOR IDENTIFICATION</u>	<u>IN EVIDENCE</u>			
27						
28	CX-17	940		945		
29	CX-38	951				
30	CX-39	968		969		
31	CX-40	969		970		
32	CX-41	970		977		
33	CX-42	985		986		
34	CX-43	977		981		
35	CX-45	986		986		
36	CX-46	1041				
37						
38	RX-29	1120				
39	RX-32	1121		1130		
40	RX-71	910		913		
41	RX-76	1039				
42	RX-77	993				
43	RX-79	1059		1080		
44	RX-80	1083		1084		
45	RX-81	1114		1118		



1210

1 MR. GOLDBERG:

2 Or would you please swear the witness?

3 ADMINISTRATIVE LAW JUDGE:

4 Kindly stand, Mr. Kassner, and raise your right  
5 hand.

6 \*\*\*

7 (Witness sworn)

8 \*\*\*

9 ADMINISTRATIVE LAW JUDGE:

10 Fine. Have a seat there. State your full name and  
11 your address for the record.

12 THE WITNESS:

13 My full name is Gregory Thomas Kassner and my  
14 address is 1373 Winborn Circle, Kennesaw, Georgia  
15 30152.

16 \*\*\*

17 GREGORY THOMAS KASSNER,  
18 called as a witness, having first been duly sworn,  
19 according to the law, testified as follows:

20 DIRECT EXAMINATION

21 BY MR. GOLDBERG:

22 Q. Mr. Kassner, you understand that the  
23 proceeding we are here dealing with before Judge Phalen is  
24 a matter under Section 211 of the Energy Reorganization  
25 Act?

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1211

1 A. Generally, yes.

2 Q. Now, who are you currently employed by?

3 A. I'm employed by the Institute of Nuclear Power  
4 Operations known as INPO.

5 Q. That's the same company where Mr. Strodl who  
6 is in the courtroom today is employed, is that correct?

7 A. Yes.

8 Q. You and Mr. Strodl are now colleagues down at  
9 INPO?

10 A. Yes, we are.

11 Q. Please tell the Court what you basically do in  
12 connection with your work at INPO.

13 A. My specific position is radiation protection  
14 evaluator and we visit nuclear power plants across the  
15 country and the world and evaluate their performance and  
16 make recommendations to how they can improve their  
17 performance.

18 Q. Want to give the Court a little bit of your  
19 educational background and start after the high school  
20 level, please.

21 A. Okay. I attended Purdue University and  
22 graduated in 1983 with a Bachelor of Science in  
23 Environmental Health with a major in health physics which  
24 is radiation protection. And shortly after that began  
25 working for ComEd at Zion Station.

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1216

1 Q. Okay. And in March of 1993 did you assume a  
2 new position of responsibility?

3 A. Yes, in March of 1993 I became the radiation  
4 protection department head.

5 Q. Radiation protection department head.

6 A. Right.

7 Q. And that is the position that Mr. Strodl  
8 eventually assumed when he arrived at ComEd Zion?

9 A. Yes. The title was health physics services  
10 supervisor.

11 Q. Okay.

12 A. And that's the position that Mr. Strodl  
13 assumed in the July of 1996 time frame.

14 Q. Okay. So between 1993 and mid-1996 you were  
15 in that position for the entire time?

16 A. From March of '93 through, right, July of '96,  
17 yes.

18 Q. Now, I want to direct you to the 1996 time  
19 frame in light of your last answer and confirm for the  
20 position that you were holding during the 1996 time period  
21 beginning in January.

22 A. Which -- you're asking which position?

23 Q. January 1996 you were holding what position?

24 A. Health physics services supervisor.

25 Q. And this was until what date approximately?

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1217

1 A. July probably 15 or so of 1996.

2 Q. Okay. As the head of the radiation protection  
3 department were there certain responsibilities which you  
4 would consider the primary responsibilities for the  
5 position -- for the person in that position?

6 A. Well, sure. There was -- my primary  
7 responsibility was to ensure radiological safety for the  
8 workers in the plant and that's accomplished by the  
9 radiation -- primarily by the radiation protection  
10 department members, technicians, supervisors, and the  
11 management staff. And so I was responsible for making sure  
12 that they implemented their duties and carried out  
13 radiation protection procedures.

14 Q. Well, let me just confirm. I think you hit  
15 that in your last answer but I'd like to establish which  
16 types of employees at the Zion plant were under your let's  
17 say department while you were the head of the department?  
18 Give me the titles of the employees.

19 A. Oh, radiation protection technicians.

20 Q. And those would be a union or management  
21 position?

22 A. That's a union position.

23 Q. Okay. Who else?

24 A. And then radiation protection supervisors who  
25 are part of the management organization.

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	<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
1					
2					
3	For the Claimant:				
4					
5	[None]				
6					
7					
8	For the Employer:				
9					
10	Gregory Kassner				
11	by Mr. M. Kohn		1347		1397
12					
13	by Mr. Goldberg			1394	
14					
15	Walter Strodl				
16	by Mr. O'Malley	1400			
17		***			
18					
19	<u>EXHIBIT</u>	<u>FOR IDENTIFICATION</u>		<u>IN EVIDENCE</u>	
20	CX-31	[692]		[697]	
21					
22	CX-48	1381			
23					
24	RX-35	1304			
25					
26	RX-82 [JX-71]	1289			
27					
28	<u>EXHIBIT</u>	<u>FOR DISCUSSION</u>			
29	JX-13	1326			
30	JX-17	1293			
31	JX-32	1434			
32	JX-39	1437			
33	JX-41	1467			
34	JX-44	1257			
35	JX-44A	1260			
36	JX-45	1277			
37	JX-45A	1278			
38	JX-64	1315			
39					
40					
41	CX-31	1387			

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1           Okay. Cross examination.

2       MR. MICHAEL KOHN:

3           Yes, Your Honor.

4                               \*\*\*

5                               CROSS EXAMINATION

6       BY MR. MICHAEL KOHN:

7           Q.    Mr. Kassner, first I'd just like to ask one or  
8       two questions where we're at at this point. Is it true  
9       that the practice was such that objects at or above 1,000  
10      millirem were routinely placed in the barrel?

11           A.   Objects above 1,000 millirem?

12           Q.   Yes. Were routinely placed in the barrel.

13           A.   Measured at what distance from the objects?

14           Q.   That called into question the technical  
15      specification you've been referencing.

16                               \*\*\*

17      ADMINISTRATIVE LAW JUDGE:

18           At 30 centimeters?

19      MR. MICHAEL KOHN:

20           Yes.

21      ADMINISTRATIVE LAW JUDGE:

22           At one foot? Is that the full scope of the...

23      MR. MICHAEL KOHN:

24           Yes, that's the important measurement point.

25      THE WITNESS:

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1 Yes. It's probable that that happened.

2 \*\*\*

3 BY MR. MICHAEL KOHN:

4 Q. Well, isn't it true that over the -- since you  
5 had been the head of the radiation protection department,  
6 that it absolutely did happen numerous times over the  
7 course of the years. Isn't that true?

8 A. It's possible. And I would need to review  
9 past surveys to verify that.

10 Q. So then your testimony is you have never  
11 reviewed the past surveys to see how deficient your  
12 department was over the past few years with respect to  
13 implementing this technical specification.

14 A. I haven't recently reviewed those surveys.

15 Q. Have you ever reviewed them?

16 A. I've reviewed surveys in the past.

17 Q. After the gasket incident, did you review  
18 surveys to determine how widespread the practice was and  
19 how deficient was your department over the last few years  
20 in implementing the 1,000 millirem of 30 centimeter  
21 requirements?

22 A. No. We didn't review those surveys.

23 Q. And isn't that the heart of Randy Robarge's  
24 pleading with you and trying to make clear to you as a  
25 department head that the problem wasn't Randy Robarge, the

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1 problem is systemic. It's been going on for years. And,  
2 yes, I got caught in it, but what should we do about it.  
3 Was he trying to make that point to you?

4 A. He was trying to make that point, yes.

5 Q. Okay. And is it true that at the time the hot  
6 gasket was found, Mr. Schuster was present. When the  
7 reading of 100 REM was detected, Mr. Schuster was right  
8 there.

9 A. I don't understand that it occurred that way.  
10 No.

11 Q. Do you understand that at some point before  
12 the gasket was placed into the nylon bag and placed into  
13 the barrel, that Mr. Schuster was present and physically  
14 observing the process?

15 A. When the diaphragm and the gasket, which were  
16 stuck together, were first removed from the steam  
17 generator, I believe Mr. Schuster was present at that  
18 point.

19 Q. And Mr. Schuster is the ALR specialist--  
20 ALARA specialist.

21 A. The ALARA analyst.

22 Q. And what is ALARA -- what does ALARA refer to?

23 A. As low as reasonably achievable.

24 Q. And his job is to make sure that the work  
25 being done will protect those workers to the fullest extent

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1 Well, now he can be testifying to the fact that he  
2 didn't see the document. It doesn't mean he wasn't  
3 aware that there was a circumstance that had to be  
4 corrected. I want to know the answer to that.

5 MR. GOLDBERG:

6 Granted, Your Honor. I just want the witness to be  
7 clear for record purposes what question he's  
8 responding to. That was so open ended, it didn't  
9 give him much...

10 ADMINISTRATIVE LAW JUDGE:

11 Okay. Narrow your question accordingly.

12 \*\*\*

13 BY MR. MICHAEL KOHN:

14 Q. And I believe you were aware that your  
15 department was deficient with respect to the filing of  
16 PIFs. Were you not?

17 A. Not specifically, no.

18 Q. So is it your testimony then that the December  
19 4, through December 14, INPO evaluation assessment finding  
20 RP.3-2, which reads, "Weakness in radioactive material  
21 controls..."

22 \*\*\*

23 MR. O'MALLEY:

24 Objection, Your Honor, for reading a document not  
25 in evidence. Do you want to show it to the

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1 witness?

2 ADMINISTRATIVE LAW JUDGE:

3 Show it to him.

4 MR. O'MALLEY:

5 Objection to the hearsay. This is all hearsay,  
6 Your Honor.

7 MR. MICHAEL KOHN:

8 Your Honor, we'd like...

9 ADMINISTRATIVE LAW JUDGE:

10 He's asking him if he recalls this specific thing.  
11 That question's all right.

12 \*\*\*

13 BY MR. MICHAEL KOHN:

14 Q. You may read it. I'm going to start over.  
15 Looking at INPO outage review, February 20, through March  
16 3, 1995, I believe it's binding 25. "Radiological  
17 performance problems identification follow up. Station  
18 workers and RPT's often do not generate problem  
19 identification forms for radiological occurrences. As a  
20 result, radiological protection and station management are  
21 insufficiently aware of problems or their root causes  
22 associated with the radiological protection program." Are  
23 you aware of that finding?

24 A. I don't specifically recall that finding.

25 Q. Were you aware of a subsequent finding made in

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1 June of 1996, by INPO, that the ability to generate PIFs in  
2 your department had not been corrected?

3 A. In June of 1996?

4 Q. Yes.

5 A. I'm sorry. I don't have specific recollection  
6 of it.

7 Q. You're not aware of a finding by INPO that in  
8 June of 1996, a corrective action still had not been  
9 effectively implemented with respect to the generation of  
10 PIFs in your organization.

11 A. In relation to the generation of PIFs, no, I  
12 don't recall that.

13 Q. Now you testified, with respect to the steam  
14 generator gasket, that you were the individual who ordered  
15 that PIFs should be initiated. Correct?

16 A. Yes.

17 Q. And you also testified that it was initially  
18 found on the floor by a RP technician, or someone working  
19 in -- who found it on the floor?

20 A. A radiation protection technician.

21 Q. RP technician. Wasn't that RP technician at  
22 the point of -- would that be considered a RAM. Do you  
23 know what I'm referring to as a RAM?

24 A. I understand RAM to -- it would be an acronym  
25 for radioactive material.

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1 Q. Yes. That's where I was getting to.

2 A. Yes.

3 Q. And isn't it a fact that INPO is tracking a  
4 wholly deficient RAM practice in your department finding 60  
5 or 70 pieces of uncontrolled RAM lying throughout the RP  
6 area? Wasn't that a big problem?

7 A. At what point in time are you referring to?

8 Q. 1995 through 1996.

9 A. I recall, during the year end INPO inspection  
10 evaluation in 1995, we were concluding a unit outage and  
11 stationed the way that we demobilized the equipment from  
12 containment was not as best as it could have been. And  
13 there was a lot of radioactive material, a lot of  
14 radioactive material bags stored in the fuel building. And  
15 it could have been better, yes.

16 Q. Okay. And as a result of a PIF that was  
17 instituted, I believe at another plant, actually, your  
18 department was required to survey the entire RP area to  
19 find out how many pieces of RAM were lying around,  
20 unidentified, unlabeled, or labeled and just not properly  
21 disposed of. Correct?

22 A. Yes.

23 Q. And do you remember the magnitude of the  
24 amount of RAM that was found?

25 A. There were a good number of items. I don't

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1 remember the exact number at this point.

2 Q. Neither do I. But it's in here somewhere.  
3 And my recollection was like 60 or 70. Does that sound  
4 reasonable?

5 A. Yes, it does.

6 Q. Okay. Now you have a radiation protection  
7 technician walk in to the RPA, finds an object that is  
8 specifically used in the RPA for containing radioactive  
9 waste. Correct?

10 A. Are we talking about...

11 \*\*\*

12 ADMINISTRATIVE LAW JUDGE:

13 You're now with the steam generator gasket  
14 incident?

15 MR. MICHAEL KOHN:

16 Yes.

17 ADMINISTRATIVE LAW JUDGE:

18 Okay. Try to be more...

19 \*\*\*

20 BY MR. MICHAEL KOHN:

21 Q. We're at the steam generator gasket incident.  
22 A technician walks in, finds a bag that is specifically  
23 used to contain hot particles from falling off of hot  
24 equipment. Correct? You testified that's the purpose of  
25 that bag. Right?

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1 BY MR. MICHAEL KOHN:

2 Q. Did you -- what is your understanding? You  
3 testified about some RP technician touching the gasket.

4 A. I understand that the technician picked up the  
5 bag and felt the gasket inside, and then dropped the bag on  
6 the floor, knowing that it was likely a hot piece of  
7 material.

8 Q. When the RP technician found a piece of RAM  
9 lying in the RPA, what was the proper required procedure at  
10 that specific point in time?

11 A. The proper practice was what was done.

12 Q. No. I don't care practice procedures, sir.

13 A. Well, a number of them would apply.

14 Q. Let's turn to the PIF procedure. When the RP  
15 technician found a piece of uncontrolled RAM in the  
16 radioactive protective area, should a PIF have been  
17 immediately generated?

18 A. What do you mean by immediately generated?

19 Q. Well, what is the requirement under the PIF  
20 procedure for immediate generation of a PIF?

21 A. The immediate requirement is to place whatever  
22 condition is discovered by a radiation worker at the plant,  
23 place that condition in a safe manner.

24 Q. Well, you have a piece of RAM on the ground.  
25 A survey is done. And you put whatever barrier you have

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1 to. At that instant you're supposed to write -- as soon as  
2 that's done, that's when you're supposed to write the PIF.  
3 Correct?

4 A. You can't write a PIF from containment, from  
5 the basement of containment.

6 Q. Well, then the RP technician, after taking the  
7 appropriate protocol, was then supposed to leave the RP  
8 area and go and write a PIF. Right?

9 A. The radiation protection technician or a  
10 radiation protection supervisor could write the PIF.

11 Q. And it wasn't written at that point in time.  
12 Was it?

13 A. I don't know how much time elapsed between the  
14 time the gasket was discovered and a member of my staff  
15 wrote the PIF. I don't know that.

16 Q. You said you ordered that be written.  
17 Correct?

18 A. Yes. I told Brent Robinson to ensure that a  
19 PIF was written.

20 Q. And I think you said it had already gone  
21 through two levels of supervision before it got to you.

22 A. Yes. And that communication could have taken  
23 place in two minutes or two hours. I don't recall.

24 Q. Well, what was the procedure for in your  
25 department for immediately writing PIFs and hand delivering

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1     them to you?

2             A.     There was no time frame specified on the  
3     procedure. So I can't tell you that.

4             Q.     Okay.     So then your procedure in your  
5     department, to make sure that PIFs are handwritten and  
6     delivered to you, didn't apply in this case.

7             A.     The expectation that we identify problems and  
8     we write PIFs when we identify those problems existed. And  
9     that was done.

10            Q.     But my question is very specific. You had an  
11     expectation that a PIF would be hand delivered to you as  
12     soon as possible. Correct?

13            A.     I have an expectation that PIFs would be  
14     written when problems were discovered, and that I would  
15     receive either a copy or a verbal explanation of those PIFs  
16     on a routine basis.

17            Q.     And by the time it got to two levels of  
18     supervision, you finally had a meeting with Brent Robinson,  
19     and he doesn't hand you a PIF. Does he?

20            A.     Sir, you'd have to be present in the radiation  
21     protection office to understand the context of the events.

22            Q.     And how many PIFs did Mr. Robinson issue in  
23     the entire year of 1996? Do you know?

24            A.     How many PIFs did Brent Robinson initiate...

25            Q.     Yes.

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1 A. ...on his own?

2 Q. Yes.

3 A. During 1990...

4 Q. Six.

5 A. I don't know. I've never counted them up.

6 Q. And would one surprise you?

7 A. Only one in one year, that would probably  
8 surprise me.

9 Q. And would it surprise you that your department  
10 was still fully not complying with the generation of PIFs  
11 after the INPO report identified the problem to your--  
12 specific to your department in 1995?

13 A. I believe we were -- I was encouraging the  
14 staff, the group leaders were encouraging the staff to  
15 identify problems and document the PIFs. And I believe we  
16 were doing that.

17 \*\*\*

18 ADMINISTRATIVE LAW JUDGE:

19 Mr. Kohn, can you get down right now to your -- you  
20 started this questioning approximately 20 minutes  
21 ago, dealing with the root cause questions...

22 MR. MICHAEL KOHN:

23 Yes, sir.

24 ADMINISTRATIVE LAW JUDGE:

25 ...on the steam gasket generator.

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1 MR. MICHAEL KOHN:

2 Okay. I can do the question you're looking for.

3 \*\*\*

4 BY MR. MICHAEL KOHN:

5 Q. Mr...

6 A. Kassner.

7 Q. Isn't it true that a proper PIF -- if the  
8 proper procedure for writing PIFs had been implemented, as  
9 in 1995, and management was able to determine the true  
10 radiological protection and station management deficiencies  
11 in your organization that the problem of not tagging and  
12 taking the radiological protections for finding a one REM  
13 object at 30 centimeters would have been identified?

14 A. I'm not sure I understand your question.  
15 Sorry.

16 Q. Let me rephrase it. If the practice had been  
17 ongoing for years that pieces of material above one REM at  
18 30 centimeters would be placed into the barrel, not being  
19 attached, as is recognized in the report to the NRC on this  
20 incident, if PIFs were being generated in 1994 to the  
21 present each and every time someone failed to put a tag on  
22 a one REM at 30 centimeter distance object, don't you think  
23 by the time the steam generator gasket incident occurred,  
24 the practice would have been fixed?

25 A. I can answer that by saying if personnel

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1 recognized in the course of steam generator work that those  
2 components were reading one REM per hour at 30 centimeters  
3 or greater, if they recognize that, then PIFs should have  
4 been written.

5 Q. So then the real deficiency is, in your  
6 department that...

7 A. Recognize it.

8 Q. ...your technicians were unable -- how many  
9 technicians were in your department?

10 A. There were close to 30 technicians in the  
11 department.

12 Q. Thirty technicians. Thirty technicians  
13 working in your department were unable to recognize, as a  
14 group, that every time they found a piece of material in  
15 the RPA greater than one REM at 30 centimeters, that they  
16 were supposed to take the appropriate course of action.  
17 Correct?

18 A. You're making a general statement that I can't  
19 answer to.

20 \*\*\*

21 MR. MICHAEL KOHN:

22 Your Honor, is it possible that we can have a short  
23 recess to assess how I can truncate the rest of the  
24 examination?

25 ADMINISTRATIVE LAW JUDGE:

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1           If it will help to narrow this. Is that what  
2           you're saying?

3       MR. MICHAEL KOHN:

4           Yes.

5       ADMINISTRATIVE LAW JUDGE:

6           You want to get down to your base question.

7       MR. MICHAEL KOHN:

8           Yes.

9       ADMINISTRATIVE LAW JUDGE:

10          Can you do it in five minutes?

11       MR. MICHAEL KOHN:

12          No. It's going to be more. I have a lot prepared.

13          All I want to try to do is just X out as much as I  
14          can and just truncate my cross as much as I can.

15       ADMINISTRATIVE LAW JUDGE:

16          Well, that's what I want you to do too. The  
17          problem is it's 10:35 now. And I'm trying to  
18          figure out how you're going to do -- how we're  
19          going to meet our expectations if we take a break  
20          for ten minutes.

21       MR. MICHAEL KOHN:

22          Let's just take an in place break, and I can--  
23          maybe a minute or two.

24                                   \*\*\*

25       [OFF THE RECORD]

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\*\*\*

ADMINISTRATIVE LAW JUDGE:

Back on the record.

\*\*\*

BY MR. MICHAEL KOHN:

Q. Mr. Kassner, you -- Joint Exhibit 13 is the letter Randy Robarge wrote to you after the counseling session. Correct?

A. Yes.

Q. Did you ever again meet with Randy Robarge to tell him, discuss with him anything contained in that letter?

A. It's very likely that we did, that we discussed it. I don't recall a specific meeting, if we had that type of meeting.

Q. Did you ever tell Mr. Robarge the letter was not acceptable?

A. No.

Q. The technical specifications identified in the NRC report on the steam generator gasket incident are not maintained that the RP supervisor's desk. Is it, a copy of it?

A. I think that's true.

Q. You heard the testimony of Mr. Guthrie, I think you testified on direct, concerning the PIF procedure

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1 at the plant.

2 A. I was present for most of that testimony, yes.

3 Q. And you were asked whether you agreed with all  
4 of it. Correct?

5 A. Yes.

6 Q. Okay. However, you know that much of his  
7 testimony was not absolutely accurate. Don't you?

8 A. What do you mean?

9 Q. Can you think of anything that he said in his  
10 testimony that, because he was not at Plant Zion, is a  
11 little off?

12 A. Nothing specific comes to mind right now.

13 Q. Do you recall -- for example, do you remember  
14 his testimony concerning the role of supervision in filling  
15 out PIFs?

16 A. I remember the general essence of it. I don't  
17 recall the specifics.

18 Q. Was the general essence that they're not  
19 supposed to initiate it and sign off as the supervisory  
20 reviewer?

21 A. Yes. I remember that.

22 Q. We're marking the exhibit as Complainant's  
23 Exhibit CX -- Complainant's Exhibit 48. That testimony was  
24 not accurate. Was it?

25 A. Meaning -- could you -- would you ask me a

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1 specific question on that, please.

2 Q. I'm asking you the sum and substance of the  
3 testimony Mr. Guthrie gave with respect to the supervisor's  
4 needing to obtain sign off from their supervision before  
5 initiating a PIF, in the PIF process. That was inaccurate.  
6 Wasn't it?

7 \*\*\*

8 MR. GOLDBERG:

9 Your Honor, if I may just interpose here. Mr.  
10 Kassner was not in the room for a good deal of Mr.  
11 Guthrie's testimony. I know that because I was  
12 meeting. And I just want to establish that to the  
13 extent they were trying to talk about Mr. Guthrie's  
14 testimony, assuming Mr. Kassner's familiar with all  
15 of it, I don't think he should be required to  
16 speculate what Mr. Guthrie may or may not say.

17 MR. MICHAEL KOHN:

18 First, I'd like to note an objection to an improper  
19 objection on the part of respondent. I believe  
20 it's in the form of prompting a witness. The  
21 witness has testified that he heard the testimony.  
22 And if he wanted to bring this out, he certainly  
23 could. But I don't...

24 ADMINISTRATIVE LAW JUDGE:

25 So basically we have an objection to the objection.

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1           Is that what we're basically going with at this  
2           point? If you withdrew the first thing you said  
3           and said it correctly, would that eliminate both  
4           the objections? I think so.

5       MR. MICHAEL KOHN:

6           The body.

7       ADMINISTRATIVE LAW JUDGE:

8           Good.

9   \*\*\*

10      BY MR. MICHAEL KOHN:

11           Q. Mr. Kassner, you did hear the testimony that  
12           Mr. Guthrie gave with respect to supervisors needing to  
13           obtain a sign off from their superiors if they were  
14           initiating the PIF. Correct?

15           A. Yes.

16           Q. And that testimony is not accurate. Is it?

17           A. I'm not sure. I need -- I would need to  
18           review the PIF procedure to give you an absolute answer on  
19           that.

20           Q. Have you reviewed the PIF procedure prior to  
21           testifying today?

22           A. Not recently no.

23           Q. What about the practice in the department,  
24           what was the practice in the department?

25           A. The practice in the department was for

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1 radiation protection numbers, two write a PIF when we  
2 identified deficient conditions, the problems.

3 Q. What practice with respect to a supervisor  
4 originating the PIF as to who was supposed to sign off on  
5 that PIF, the second level?

6 A. The -- as the PIF is set forth, the  
7 expectations for an immediate supervisor to provide a  
8 second review.

9 Q. And you're looking now at Complainant's  
10 Exhibit 48. Correct?

11 A. That's correct.

12 Q. And on page one of this exhibit there's a PIF,  
13 95-1575. Do you see that?

14 A. Yes.

15 Q. And who is it originated by?

16 A. John Meyers.

17 Q. And who is signing off on it?

18 A. The signature looks to be John Meyers'.

19 \*\*\*

20 ADMINISTRATIVE LAW JUDGE:

21 Okay. This is 96-1575.

22 THE WITNESS:

23 Yes.

24 \*\*\*

25 BY MR. MICHAEL KOHN:

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1 Q. And so was this a violation of procedures or  
2 normal practice?

3 A. It's probably not in accordance with the exact  
4 expectations of the PIF procedure.

5 Q. Okay. Well, when all these PIFs were being  
6 hand delivered to you, did you counsel Mr. Meyers for not  
7 following the proper procedure?

8 \*\*\*

9 MR. GOLDBERG:

10 Objection, Your Honor. I don't believe there's any  
11 testimony that these were all hand delivered to Mr.  
12 Kassner.

13 MR. MICHAEL KOHN:

14 Let me rephrase the question. All of these PIFS  
15 were being -- your expectation, where you were  
16 supposed to see every single one of these PIFs,  
17 right, before you went to the PIF committee  
18 meetings.

19 ADMINISTRATIVE LAW JUDGE:

20 Mr. Kohn, can we shortcut this? Can you ask the  
21 witness if he's seen them. If not, if they are--  
22 if they appear to be PIFs that have been filed, and  
23 then whether they were direct actions in accordance  
24 to what you said.

25 MR. GOLDBERG:

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1 Your Honor, may I attempt to shortcut this even  
2 more by noting that as I look at the dates of each  
3 of these PIFs, they are all dates after Mr. Kassner  
4 would have been removed from the department head  
5 position and no longer serving on the PIF  
6 committee.

7 ADMINISTRATIVE LAW JUDGE:

8 July 28, '95?

9 MR. GOLDBERG:

10 I'm looking at the date being 7-19-96. The stamp  
11 up there, I think, is the form date, when the form  
12 was generated. It doesn't mean that the PIF was  
13 that date. The PIF date is next to the  
14 supervisor's name, of 7-19-96, which, I believe is  
15 right. Mr. Kassner was no longer the head of the  
16 RP department. So he certainly would not have  
17 gotten these in the ordinary course, because he was  
18 no longer on the PIF committee, in the ordinary  
19 course...

20 ADMINISTRATIVE LAW JUDGE:

21 Is that true?

22 THE WITNESS:

23 Yes, it is.

24 ADMINISTRATIVE LAW JUDGE:

25 Can you glance through them?

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1 MR. MICHAEL KOHN:

2 Your Honor...

3 MR. GOLDBERG:

4 I'm just glancing through them quickly.

5 MR. MICHAEL KOHN:

6 Your Honor, they didn't produce any 1995, PIFs in  
7 discovery. So we're a little short as to what we  
8 can pull out.

9 ADMINISTRATIVE LAW JUDGE:

10 Well, if you have a problem with this, you probably  
11 should go to Mr. Strodl.

12 \*\*\*

13 BY MR. MICHAEL KOHN:

14 Q. Okay. Which reminds me, what is the last day  
15 you held the title as -- was it manager of the radiation  
16 protection department?

17 A. Health physics and service supervisor.

18 Q. Yes.

19 A. I think we took that to be July 15, 1996.

20 Q. If you would turn to page 24 of Complainant's  
21 Exhibit 48 -- excuse me. If you would look at  
22 Complainant's Exhibit 31, at page 35...

23 \*\*\*

24 MR. GOLDBERG:

25 Mr. Kohn, could I just be told what you're looking

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1 at again. I'm sorry.

2 MR. MICHAEL KOHN:

3 Complainant's Exhibit 31, page 35.

4 MR. GOLDBERG:

5 Thank you.

6 MR. MICHAEL KOHN:

7 Does the information contained on that page  
8 accurately set forth the level of discipline given  
9 to Mr. Robarge by you?

10 ADMINISTRATIVE LAW JUDGE:

11 Is this joint or...

12 MR. MICHAEL KOHN:

13 No. It's a Complainant's exhibit.

14 THE WITNESS:

15 I'm sorry. I reviewed the page. Could you restate  
16 the question, please.

17 \*\*\*

18 BY MR. MICHAEL KOHN:

19 Q. Does the information contained on that page  
20 accurately reflect the discipline you gave to Randy Robarge  
21 with respect to the steam generator gasket incident?

22 A. It states that the RP supervisor was  
23 individually counseled.

24 Q. Yes.

25 A. And that the RP supervisor would be given a

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1 day off with pay to develop an action plan to correct the  
2 individual performance.

3 Q. Yes. Does that accurately reflect what  
4 occurred?

5 A. Yes. I believe so.

6 Q. Except in the end it turned out to be just a  
7 half a day, based on the time of day you met with him.  
8 Correct?

9 A. Approximately a half a day, maybe a little  
10 more.

11 Q. Calling your attention to the meeting in which  
12 Mr. Robarge addressed the department, and you discussed on  
13 direct, when did that meeting happen?

14 A. When did the disciplinary meeting occur with  
15 Mr. Robarge?

16 Q. The meeting with the technicians where you had  
17 some testimony about Mr. Robarge giving a presentation.

18 A. Um...

19 \*\*\*

20 ADMINISTRATIVE LAW JUDGE:

21 Are you talking about the fourteenth?

22 MR. GOLDBERG:

23 Obviously not, Your Honor.

24 ADMINISTRATIVE LAW JUDGE:

25 I don't...

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1 MR. MICHAEL KOHN:

2 The witness testified about a -- Mr. Robarge  
3 presenting MARC principles...

4 ADMINISTRATIVE LAW JUDGE:

5 Okay. I'm sorry. Go ahead.

6 MR. MICHAEL KOHN:

7 ...I believe, to RP technicians.

8 \*\*\*

9 BY MR. MICHAEL KOHN:

10 Q. Do you recall that?

11 A. I think I stated that in the spring of '96, we  
12 were rolling out standards and expectations. They weren't  
13 marked principles. It wasn't a marked principle meeting.  
14 And that was conducted in the spring of '96. I don't  
15 recall the specific time.

16 Q. Well, that's when the MARC principles were  
17 being implemented. Weren't they?

18 A. The station began MARC training sometime in  
19 mid 1996. I don't recall when the first training class was  
20 conducted.

21 Q. And did -- Mr. Robarge will testify that he,  
22 at the meeting that you were referring to, was one where he  
23 was discussing the MARC principles with the RP technicians.  
24 Would you have any reason to not agree with that?

25 \*\*\*

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1 MR. GOLDBERG:

2 Object to the form of the question, Your Honor.

3 Was that something about Mr. Robarge's testimony?

4 ADMINISTRATIVE LAW JUDGE:

5 No. He said if -- he said Mr. Robarge will  
6 testify?

7 MR. MICHAEL KOHN:

8 Yes.

9 MR. GOLDBERG:

10 Then I object to the form of the question, Your  
11 Honor.

12 ADMINISTRATIVE LAW JUDGE:

13 Yes.

14 MR. MICHAEL KOHN:

15 I'll rephrase the question.

16 \*\*\*

17 BY MR. MICHAEL KOHN:

18 Q. Do you have any reason to doubt if evidence  
19 was presented in this proceeding, to indicate that this  
20 meeting occurred after -- wait. Let me rephrase it. The  
21 meeting you were referring to in which Mr. Robarge  
22 addressed the department, didn't it, in fact, occur after  
23 the steam generator gasket incident?

24 A. I don't recall.

25 Q. And so it's your testimony it may well have

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1 occurred after the steam generator gasket incident.

2 A. It could have.

3 Q. And therefore, in your mind, as you sit here  
4 today, you would feel comfortable choosing Mr. Robarge to  
5 lead a discussion of the RP technicians, even after the  
6 steam generator gasket incident. Correct?

7 \*\*\*

8 MR. GOLDBERG:

9 Object to the form, Your Honor.

10 ADMINISTRATIVE LAW JUDGE:

11 Answer the -- he may answer it. Overruled.

12 THE WITNESS:

13 Yes.

14 MR. MICHAEL KOHN:

15 In Complainant's Exhibit 48, page two and page 26,  
16 there are two PIFs here that occurred on July 10.  
17 Is it your understanding that those would have been  
18 initiated while you were still in charge of the  
19 department?

20 THE WITNESS:

21 I'm sorry. What documents are we identifying?

22 \*\*\*

23 ADMINISTRATIVE LAW JUDGE:

24 Forty-eight.

25 MR. MICHAEL KOHN:

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1           Forty-eight.

2       ADMINISTRATIVE LAW JUDGE:

3           The list of PIFS.

4       THE WITNESS:

5           Oh, that's the one you -- okay. That's page two  
6           and page 26. At that time I was still the health  
7           physics services supervisor, yes.

8                                   \*\*\*

9       BY MR. MICHAEL KOHN:

10           Q.    Okay. So then this PIF was initiated outside  
11           of what you understood to be the proper procedure, inasmuch  
12           as Mr. Meyers is the initiator and the supervisor person  
13           signing off on it.

14           A.    Yes.

15           Q.    And the same is true with page 26 of the  
16           exhibit.

17           A.    Yes.

18           Q.    What counseling did you give Mr. Meyers for  
19           this?

20                                   \*\*\*

21       MR. GOLDBERG:

22           Objection, Your Honor. It's the same exhibit that  
23           I believe I referred to a few minutes ago with  
24           respect to dates. I don't know that this witness  
25           would have given any counseling, as he was out of

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*Expiration date of individual notice:* August 12, 1998.

*Local Public Document Room location:* University of Missouri-Columbia, Elmer Ellis Library, Columbia, Missouri 65201-5149.

*Wolf Creek Nuclear Operating Corporation, Docket No. 50-482, Wolf Creek Generating Station, Coffey County, Kansas*

*Date of amendment request:* March 20, 1998, as supplemented by letter dated May 28, 1998.

*Brief description of amendment:* The amendment would support a modification to the Wolf Creek Nuclear Generating Station, Unit 1 to increase the storage capacity of the spent fuel pool.

*Date of individual notice in Federal Register:* July 13, 1998 (63 FR 37601).

*Expiration date of individual notice:* August 12, 1998.

*Local Public Document Room locations:* Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas 66621.

#### **Notice of Issuance of Amendments to Facility Operating Licenses**

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

*Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the Federal Register as indicated.*

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has

made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document rooms for the particular facilities involved.

*Boston Edison Company, Docket No. 50-293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts*

*Date of application for amendment:* February 20, 1998.

*Brief description of amendment:* This amendment changed the Pilgrim Nuclear Power Station Technical Specification (TS) 3/4.5.B and its Bases to incorporate the ultimate heat sink (UHS) temperature of 75 °F, as required by Amendment No. 173. The introduction of a UHS temperature restriction requires new specifications, actions, and surveillances for the salt service water system. The amendment also replaced existing specification 3.5.B "Containment Cooling System" with new Specification 3/4.5.B.1 "Residual Heat Removal (RHR) Suppression Pool Cooling", 3/4.5.B.2 "Residual Heat Removal (RHR) Containment Spray", 3/4.5.B.3 "Reactor Building Closed Cooling Water (RBCCW) System", and 3/4.5.B.4 "Salt Service Water (SSW) System and Ultimate Heat Sink (UHS)".

*Date of issuance:* July 28, 1998.

*Effective date:* July 28, 1998.

*Amendment No.:* 176.

*Facility Operating License No. DPR-35:* Amendment revised the Technical Specifications.

*Date of initial notice in Federal Register:* April 8, 1998 (63 FR 17221).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 28, 1998.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360.

*Boston Edison Company, Docket No. 50-293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts*

*Date of application for amendment:* September 19, 1997, as supplemented June 15, 1998.

*Brief description of amendment:* The amendment relocates the Radioactive Effluent Technical Specifications and

the Radiological Environmental Monitoring Program to the Offsite Dose Calculation Manual, in accordance with the recommendations of Generic Letter 89-01. Changes are also being made to other sections of the Technical Specifications to align them with NUREG-1433, to minimize changes when converting to the Improved Standard Technical Specifications.

*Date of issuance:* July 31, 1998.

*Effective date:* As of the date of issuance, to be implemented within 30 days.

*Amendment No.:* 177.

*Facility Operating License No. DPR-35:* Amendment revised the Technical Specifications and the license.

*Date of initial notice in Federal Register:* February 25, 1998 (63 FR 9591).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 31, 1998.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360.

*Carolina Power & Light Company, Docket No. 50-261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina*

*Date of application for amendment:* June 26, 1998, as supplemented July 22, 1998.

*Brief description of amendment:* The amendment revises Technical Specification (TS) 3.7.8, "Ultimate Heat Sink (UHS)," to permit an 8-hour delay in the UHS temperature restoration period prior to entering the plant shutdown required actions. This TS amendment is given as a one-time amendment change effective until September 30, 1998, after which the TS will revert back to the original TS provisions.

*Date of issuance:* July 29, 1998.

*Effective date:* July 29, 1998.

*Amendment No.:* 179.

*Facility Operating License No. DPR-23:* Amendment revised the Technical Specifications.

*Public comments requested as to proposed no significant hazards consideration (NSHC):* Yes (63 FR 36967 dated July 8, 1998). The notice provided an opportunity to submit comments on the Commission's proposed NSHC determination. No comments have been received. The notice also provided for an opportunity to request a hearing by August 7, 1998, but indicated that if the Commission makes a final NSHC determination, any such hearing would take place after issuance of the amendment.

The Commission's related evaluation of the amendment, finding of exigent circumstances, and final determination of NSHC are contained in a Safety Evaluation dated July 29, 1998.

*Attorney for licensee:* William D. Johnson, Vice President and Senior Counsel, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602.

*NRC Project Director:* P. T. Kuo, Acting.

*Commonwealth Edison Company, Docket Nos. 50-295 and 50-304, Zion Nuclear Power Station Units 1 and 2, Lake County, Illinois*

*Date of application for amendments:* March 30, 1998.

*Brief description of amendments:* The amendments will (1) restore Custom Technical Specifications (CTS) and the associated license conditions that had been replaced by Improved Technical Specifications (ITS), (2) change certain management titles and responsibilities to reflect the permanently shutdown condition of the plant, (3) allow use of Certified Fuel Handlers in lieu of licensed operators, (4) modify shift crew composition, and (5) eliminate verbiage that implies the units are operational.

*Date of Issuance:* July 24, 1998.

*Effective date:* Immediately, to be implemented within 30 days.

*Amendment Nos.:* 179 & 166.

*Facility Operating License Nos. DPR-39 and DPR-48:* The amendments revised the Technical Specifications.

*Date of initial notice in Federal Register:* May 6, 1998 (63 FR 25105). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 24, 1998.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085.

*Consolidated Edison Company of New York, Docket No. 50-247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York*

*Date of application for amendment:* June 6, 1997, as supplemented September 25, 1997.

*Brief description of amendment:* The amendment revises Technical Specifications (TS) Table 4.1-2, Frequency for Sampling Tests, to delete the requirement to sample the spray additive tank and delete the requirement for a sodium hydroxide (NaOH) spray additive in TS Section 5.2.C.1.

*Date of issuance:* July 29, 1998.

*Effective date:* As of the date of issuance to be implemented within 30 days.

*Amendment No.:* 197.

*Facility Operating License No. DPR-26:* Amendment revised the Technical Specifications.

*Date of initial notice in Federal Register:* January 28, 1998 (63 FR 4310).

The September 25, 1997, letter provided clarifying information that did not change the initial proposed no significant hazards consideration.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 29, 1998.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

*Duke Energy Corporation, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina*

*Date of application for amendments:* March 3, 1998, as supplemented by letters dated April 24, May 7, and July 22, 1998.

*Brief description of amendments:* The amendments revise Figure 5.1-1 of the Technical Specifications (TS) to show the new location of the meteorological tower. The meteorological tower will be relocated to a new location to facilitate use of the current location as a construction site. The proposed TS change does not change the related TS Section 5.1.1.

*Date of issuance:* July 30, 1998.

*Effective date:* As of the date of issuance to be implemented within 30 days.

*Amendment Nos.:* Unit 1—179; Unit 2—161.

*Facility Operating License Nos. NPF-9 and NPF-17:* Amendments revised the Technical Specifications.

*Date of initial notice in Federal Register:* June 29, 1998 (63 FR 35293).

The July 22, 1998, submittal provided clarifying information that did not change the scope of the March 3, 1998, application and the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 30, 1998.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* J. Murrey Atkins Library, University of North Carolina at Charlotte, 9201 University City Boulevard, Charlotte, North Carolina.

*Duquesne Light Company, et al., Docket Nos. 50-334 and 50-412, Beaver Valley Power Station, Unit Nos. 1 and 2, (BVPS-1 and BVPS-2) Shippingport, Pennsylvania*

*Date of application for amendments:* June 19, 1998, as supplemented June 23, 1998.

*Brief description of amendments:* These amendments revise the BVPS-1 and BVPS-2 Technical Specifications (TSs) definitions of a channel calibration to add two sentences stating that (1) the calibration of instrument channels with resistance temperature detector or thermocouple sensors may consist of an inplace qualitative assessment of sensor behavior and normal calibration of the remaining adjustable devices in the channel and (2) whenever a sensing element is replaced, the next required channel calibration shall include an inplace cross calibration that compares the other sensing elements with the recently installed sensing element. This change makes the BVPS-1 and BVPS-2 TS definition of channel calibration consistent with the definition of a channel calibration contained in the NRC's improved Standard Technical Specifications for Westinghouse Plants (NUREG-1431, Revision 1).

*Date of Issuance:* July 28, 1998.

*Effective date:* Both units, effective immediately, to be implemented within 30 days.

*Amendment Nos.:* 216 and 93.

*Facility Operating License Nos. DPR-66 and NPF-73:* Amendments revised the Technical Specifications.

*Date of initial notice in Federal Register:* June 26, 1998 (63 FR 34939).

The June 23, 1998, letter provided minor editorial changes to the TS pages that did not change the initial proposed no significant hazards consideration determination or expand the amendment request beyond the scope of the June 26, 1998 Federal Register notice.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 28, 1998.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, PA 15001.

*Florida Power Corporation, et al., Docket No. 50-302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida*

*Date of application for amendment:* March 20, 1998, and supplemented May 22, 1998.