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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

DOCKETED  
USNRC

ATOMIC SAFETY AND LICENSING BOARD '98 AUG -3 A10 :58  
Before Administrative Judges:

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

OFFICE OF THE  
RULES AND  
ADJUDICATION

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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
	)	
_____	)	

**PETITIONER'S AMENDED PETITION TO INTERVENE AND STATEMENT OF  
CONTENTIONS**

On March 30, 1998 the Commonwealth Edison Company (hereinafter, "Applicant"), applied for an amendment to their license to operate Zion Nuclear Power Station, Units 1 and 2 (hereinafter, "Plant Zion"). See letter from John C. Brons, Site Vice President at Zion Nuclear Station to the NRC, dated March 30, 1998. This letter contained a number of attachments. Attachment A contained a full statement of the proposed amendments.

The Commission on May 6, 1998, published notice of the March amendment request. 63 Fed. Reg. 25,101 (May 6, 1998). On June 4, 1998, Mr. Edwin D. Dienethal pursuant to 10 C.F.R. 2.714(a) filed a petition to intervene in the Commonwealth Edison license amendment proceeding because of threat to public health and safety posed by Zion Nuclear Station due to intentional violations of safety related procedures. As a result, a Licensing Board was

established on June 11, 1998 to preside over the proceedings.

The Licensing Board issued an Order on June 17, 1998 establishing a schedule for this proceeding. On July 1, 1998, Commonwealth Edison submitted an answer to the petition for intervention. The NRC Staff issued a response to the petition for intervention on July 8, 1998. Both Commonwealth Edison and the NRC Staff alleged that Mr. Dienethal did not establish that he had standing to bring forth a petition to intervene. However, Mr. Dienethal in his initial petition to intervene indicated the intent in his petition to elaborate his rights to intervene in an amended petition.

On July 10, 1998, the Licensing Board issued an Order recognizing that “pursuant to 10 C.F.R. § 2.714 (a)(3), petitioner Edwin D. Dienethal has the right to “amend his petition for leave to intervene . . . without prior approval of the presiding officer at any time up to . . . fifteen (15) days prior to the holding of the first prehearing conference.” The Board further emphasized according to 10 C.F. R. § 2.714(b)(1) that the petitioner shall file a supplement to the petition to intervene that must include a list of contentions which the petitioner seeks to have litigated in the hearing. In addition, the Licensing Board in this order established that Mr. Dienethal could amend his petition and submit any contentions by July 22, 1998. An enlargement of time was granted by the Licensing Board on July 20, 1998 to enlarge petitioner’s time to amend his petition and submit any contentions by July 31, 1998. Mr. Dienethal herein submits his amended petition to intervene and his list of contentions.

### **INTRODUCTION**

This proceeding concerns a request from Mr. Edwin D. Dienethal to intervene in amendments to Applicant Commonwealth Edison’s license to operate Plant Zion. Mr. Dienethal

resides within ten miles of Plant Zion. He worked at the plant as a supervisor for ten years. Based upon his knowledge of actual plant operations, his ability to obtain information (and expert opinions) from current and former plant employees, and his direct personal interest in the safe operations of Plant Zion, Mr. Dienethal is uniquely situated to positively contribute to the licensing proceeding.

Mr. Dienethal has formed the Committee for Safety at Plant Zion (CSPZ). He is the co-director of CSPZ. The other co-director of CSPZ is Mr. Randy Robarge. Mr. Robarge will be participating in this case as an expert and fact witness. As will be further explained in the standing section, Mr. Robarge is a life-long resident of the Zion area, a graduate of Zion High School, and a former employee of Applicant. Mr. Robarge has held numerous full-time and contractor positions for Applicant at most of its nuclear plants. At Plant Zion, Mr. Robarge performed numerous jobs, ranging from a laborer during the construction phase of the plant to a Radiation Protection Supervisor.

This proceeding 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 petitioner needs to prove three elements of standing. First, that the petitioner has 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 petitioner 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,

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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).

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 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, Petitioner Dienethal resides within 10.4 miles of Plant Zion, well within the standard distance accepted for intervention. See Affidavit of Edwin D. Dienethal, ¶2.

Petitioner Dienethal and his family reside, recreate, work, and perform virtually all of

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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.).

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's children's school is only twelve miles from the plant. See Affidavit of Edwin D. Dienethal, ¶5. Additionally, the Petitioner 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 Petitioner Dienethal and his family 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).

Plant Zion poses a concrete and serious risk of future negative health effects on Petitioner Dienethal, his wife and children, his family, and his community by threatening the food, water, and air quality of Dienethal's community. See Affidavit of Edwin D. Dienethal, ¶¶10, 18, 19, 20, 21. He has alleged 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. Petitioner has also alleged 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 Dienethal's property value, as well as the property value of his surrounding community overall. Id., ¶ 4. These allegations are more than sufficient to satisfy the injury in fact and other standing requirements necessary to grant Petitioner 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, Petitioner has 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, Petitioner alleges that if Commonwealth Edison Co.'s request for amendment is approved then these already unsafe conditions at Plant Zion will worsen. Accordingly, Petitioner has more than satisfied the standing requirements because he would be injured if Plant Zion's amendment request were granted due to the lack of character and competence of the plant's management.

Petitioner Dienethal satisfies all of the essential elements of standing. He has alleged that his health, safety, property rights and personal finances could be adversely affected by an order granting Commonwealth Edison Co.'s request for licensing amendment. There is a reasonable possibility of future injury in fact to his health and property value, and this threat of harm to Dienethal, his family, and his community, is directly caused by the proposed license changes to Plant Zion. Petitioner Dienethal, therefore, should be granted permission to intervene against

Commonwealth Edison's proposed amendment to the Zion Nuclear Power Station nuclear license.

### **PETITIONER'S CONTENTIONS**

Petitioner 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.

An intervener should review an application before submitting contentions, explain the basis for the contention by citing pertinent portions, and explain why there is a disagreement. See 54 Fed. Reg. 33,171 (August 11, 1989). 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 Petitioner has established nineteen valid contentions.

#### 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.

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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.

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 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

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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.

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 Robartge 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 willful 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 willful 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 willful 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.

## 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.

## 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.

#### 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 NOVs 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.

## 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.

#### 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 Bruns 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.

#### 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.

#### 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.

#### 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.

#### 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, it was proven that radioactive materials were improperly removed from Plant Zion and carried home, undetected, by employees. The record in the Bourdrie 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.

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

#### 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

## 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.



### 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 NOVs 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.

### 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.

#### 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.

#### 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.

#### 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.

#### 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.

#### 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 site 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.

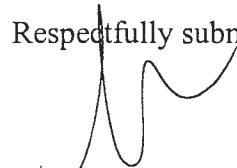


Additional bases for this contention are contained in the explanation sections of  
Contentions 1 through 18.

**CONCLUSION**

For the foregoing reasons, Petitioner's request to intervene, and all nineteen contentions  
set forth above, should be admitted.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Stephen M. Kohn', is written over the typed name.

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

KOHN, KOHN & COLAPINTO, P.C.  
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Attorneys for Petitioner

Dated: July 31, 1998

340/amendedpetition

DOCKETED  
USNRC

'98 AUG -3 A10:58

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing amended petition and supplement to petition was served via facsimile (where indicated) and first class mail, postage prepaid, this 31<sup>st</sup> day of July, 1998 on the following persons:

Administrative Judge  
Thomas S. Moore, Chairman  
Atomic Safety and Licensing Board Panel  
Mail Stop- T-3 F23  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555  
FAX: (301) 415-5599

Administrative Judge  
Dr. Jerry R. Kline  
Atomic Safety and Licensing Board Panel  
Mail Stop - T-3 F23  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Administrative Judge.  
Frederick J. Shon  
Atomic Safety and Licensing Board Panel  
Mail Stop -T-3 F23  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Atomic Safety and Licensing Board  
Panel  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555


Office of the Secretary (2)  
ATTN: Rulemakings and Adjudications  
Staff  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Office of Commission Appellate  
Adjudication  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Adjudicatory File (2)  
Atomic Safety and Licensing Board  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

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by:   
David K. Colapinto

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
	)	

**EXHIBITS TO INTERVENER'S AMENDED PETITION TO INTERVENE AND  
STATEMENT OF CONTENTIONS**

Stephen M. Kohn  
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Attorneys for Petitioner

## 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. Excerpts of Testimony of Allen Mosbaugh from Hearing Transcript for 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 Reality 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.

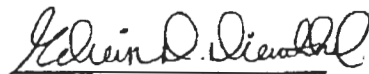
16. From February 1976 to August 1984, I was enlisted in the United States Navy. I enlisted as an Aviation Structural Mechanic/Hydraulics and trained to become an Aviation Structural Mechanic/Hydraulics Specialist. Throughout my Naval career I became certified in the performance of critical maintenance 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 AFFLIANT 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.

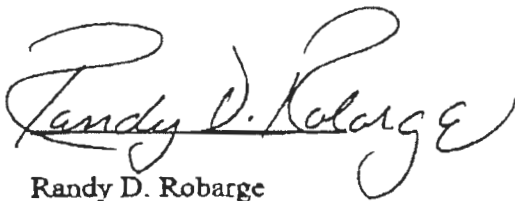
10. I contend that it is a potential environmental hazard, threat to public health and safety and threat to the health of plant workers for Plant Zion to eliminate the position of Full-Time Operator. The Full-Time Operator quickly assesses and deals with technical system problems that arise within the 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.

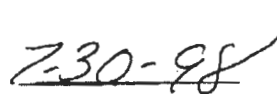
12. My experience at Plant Zion spans from March 1972 to June 1998. From December 1989 to June 1998, I was a Radiation Protection Supervisor. That position included: supervising station and contractor radiation protection technicians; developing and implementing technician procedures; contamination control; shielding installation to reduce radiation exposure, regulating radiation dose levels for employees; overseeing 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

  
Date

## **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.

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**

CONFIDENTIAL

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. KOHN:

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.

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



1 the years there may have been some of these  
2 discrepancies between the RWP's and the ZRP's?

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 RWP's 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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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 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

YORK STENOGRAPHIC SERVICES, INC.  
York, PA 17401 - (717) 854-0077

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

\*\*\*

	<u>EXHIBIT</u>	<u>FOR IDENTIFICATION</u>	<u>IN EVIDENCE</u>
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12			
13	ALJ-1 through 4	7	7

14

5	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	
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22

23	CX-20	246	248
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24

25	CX-32	206	206
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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. ~~XXXXXX~~ still work on site?

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

17 Q. And do you know a Mr. ~~XXXXXX~~?

18 A. Yes, I do.

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

20 A. ~~XXXXXXXXXX~~ 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 ~~XXXXXX~~ 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."

★ ★ ★

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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Exhibit 9, page 15 of 18

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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Exhibit 9, page 16 of 18



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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\*\*\*

BY MR. STEVEN KOHN:

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

A. Yes.

Q. What was that concern?

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

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

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

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

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

\*\*\*

MR. STEVEN KOHN:

Nothing further.

ADMINISTRATIVE LAW JUDGE:

Do you have any cross?

MR. GOLDBERG:

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

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

BY MR. MICHAEL KOHN:

\*\*\*

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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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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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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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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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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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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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