

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

In the matter of:

COMMONWEALTH EDISON COMPANY

(Braidwood Nuclear Power  
Station, Units 1 and 2)

Docket No. 50-456  
50-457

TELEPHONE CONFERENCE CALL

Location: Bethesda, Maryland  
Date: Thursday, July 11, 1985

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6 COMMONWEALTH EDISON COMPANY : Docket Nos. 50-456

7 (Braidwood Nuclear Power Station, : 50-457

8 Units 1 and 2) :

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10 TELEPHONE CONFERENCE CALL

11 Room 447

12 4350 East West Highway

13 Bethesda, Maryland

14 Thursday, 11 July 1985

15 11:10 a.m.

16 PARTICIPANTS:

17 LAWRENCE BRENNER, ESQ.,

18 Chairman and Administrative Judge

19 Atomic Safety and Licensing Board

20  
21 DR. RICHARD COLE,

22 Administrative Judge

23  
24 DR. A. DIXON CALLIHAN,

25 Administrative Judge

1 ELLEN GINSBERG, ESQ.,

2 Law Clerk

3

4 On behalf of Intervenor, Rorem et al.:

5 ROBERT GUILD, ESQ.

6 DOUGLASS CASSELL, ESQ.

7

8 On behalf of the Applicant, Commonwealth Edison Company:

9 JOSEPH GALLO, ESQ.

10

11 On behalf of the NRC Staff:

12 STUART TREBY, ESQ.

13 ELAINE CHAN, ESQ.

14 JANICE MOORE, ESQ.

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## P R O C E E D I N G S

JUDGE BRENNER: This is Judge Brenner.

We are on the record at this point, and we are transcribing this call.

Along with me here in my office is Judge Cole, and Judge Callihan is on the line from Tennessee.

Now, I recorded Mr. Guild and Mr. Cassell for Rorem et al, is that correct?

MR. GUILD: Yes, sir. That is correct.

MR. CASSELL: This is Doug Cassell, that's correct.

JUDGE BRENNER: Who is Mr. Wallace?

MR. GALLO: This is Joe Gallo. Mr. Wallace is the project manager for the Braidwood Station, but he is not on the line. He is in the office with me, but he is not on the line.

JUDGE BRENNER: All right. That's a name I didn't recognize.

And Mr. Gallo is appearing for the Applicant, of course, Commonwealth Edison.

And, Mr. Treby, you are appearing for the Staff?

MR. TREBY: That's right.

And in my office I have Elaine Chan, who is also counsel for the Staff, and as of Monday of this week, another attorney has been assigned on this case as well. Her name is Janice Moore, and she is also in the office with me.

1 JUDGE BRENNER: All right. I came back to the  
2 office today after being absent for some time, and according  
3 to some notes on this subject and Judge Cole's conversation  
4 with me, it is counsel for Rorem et al who requested this  
5 conference call. Is that correct?

6 MR. GUILD: That is correct, your Honor.

7 JUDGE BRENNER: All right. Why don't you proceed,  
8 Mr. Guild.

9 MR. GUILD: Thank you, Mr. Chairman.

10 We bring before the Board at this time, on behalf of  
11 Intervenors, two alternate motions that we seek as relief, an  
12 order compelling the NRC Staff to make available a  
13 representative of the Staff knowledgeable about the matters  
14 asserted in Rorem et al's amended quality assurance contention  
15 at paragraph 2-C.

16 In short, matters relating to harassment and  
17 intimidation allegations concerning the electrical contractor  
18 at the Braidwood Station, L. K. Comstock Company.

19 We seek relief alternatively under two provisions of  
20 the Rules of Practice. First under 10 CFR 2.740(b)(1), under  
21 which provision we seek an order permitting device of a  
22 deposition to permit us to meet the obligations that the Board  
23 has established in its June 21st order deferring ruling on  
24 that portion of our amended QA contention.

25 Alternatively we seek under 10 CFR 2.740(f), a

1 motion to compel such a deposition as a matter of discovery.

2 For the record, Parties and Board Members should  
3 have been served with a July 2nd Notice of Deposition served,  
4 directed towards the NRC Staff and three Staff members, of  
5 whom I am informed by Staff counsel, a Mr. Schultz,  
6 R. D. Schultz, the resident inspector at the Braidwood Station,  
7 might be that person who has personal knowledge of matters in  
8 question.

9 The Staff and counsel for Rorem et al exchanged  
10 correspondence on the matter and most recently, the Staff, by  
11 letter of July 8th, 1985, stated their objections on the  
12 merits to the depositions that had been sought, and asserted  
13 as objections the ground that such a deposition would  
14 represent discovery prior to the subject claimed in  
15 controversy.

16 In summary, we believe that the process that the  
17 Board has set forth in its June 21st order is a reasonable one  
18 to accommodate the conflicting interests in recognizing the  
19 hearing rights of Intervenors who have raised a claim of  
20 harassment and intimidation, protecting the interests of the  
21 Agency, and an efficient administrative process, while meeting  
22 the overriding interest of addressing the health and safety  
23 issues which this Board is charged with resolving.

24 We think that implicit in the Board's June 21st  
25 decision on this question is a mandate to Intervenors to

1 obtain the additional factual information to permit it to  
2 submit the basis and specificity behind the harassment and  
3 intimidation claims which we have brought before the Board.

4 As should be apparent, the basis that exists at this  
5 time for the harassment and intimidation claim cited at  
6 paragraph 2-C of our Amended Contention, come from the NRC  
7 Staff itself, from the cited inspection report which the Board  
8 notes in its Order, as supplemented by the limited additional  
9 information on the subject provided in deposition by the  
10 Staff's witness, Mr. Warnick, who had indirect knowledge, but  
11 not direct personal knowledge of the matters, and supplemented  
12 further by the letter of complaint of August 1984 submitted by  
13 a Comstock quality control inspector, Mr. Seeders, stating  
14 specifically a complaint of harassment and intimidation.

15 I submit that the Board essentially bases the  
16 alternative prospects of either weighing the claim of  
17 harassment and intimidation contained in paragraph 2-C solely  
18 on the basis of the very limited information which is known or  
19 knowable by Intervenor, that is reflected in the pleading  
20 before the Board at this time.

21 Or, adopting a reasonable device to permit the  
22 Intervenor to obtain the additional factual information to  
23 permit them to either plead an additional claim, or not plead  
24 an additional claim. But to do so on the basis of knowledge,  
25 as opposed to mere speculation.



1           We think the device that the Board is asked to  
2 admit, that is deposition of the Staff member on the subject,  
3 is implicitly sanctioned by the Board's Order, and it is  
4 implicitly -- and is consistent with the Appeal Board's  
5 decision in the Catawba proceeding.

6           JUDGE BRENNER: Mr. Guild, I think I understand what  
7 you are seeking now and why you are seeking it. Unless you  
8 have something new to add, I would like to conclude and move  
9 to another party to get the response.

10          MR. GUILD: Let me cite a specific point, and that  
11 is with reference to the Appeal Board's Catawba decision, ALAB  
12 687, and I direct the Board and Parties' attention to  
13 16NRC468. And there the discussion of the Commission's  
14 Prairie Island decision.

15          The context there, of course, is that meeting the  
16 specificity requirement of the contention rule assumes that  
17 information is available to permit meeting reasonable  
18 specificity. We would submit that the device we are asking  
19 the Board to approve is consistent with the teachings of  
20 ALAB 687 and would give us that opportunity.

21          JUDGE BRENNER: All right. Thank you, Mr. Guild.  
22 Could we get the Applicant's response, Mr. Gallo?

23          MR. GALLO: Yes, Judge Brenner.

24          I believe the analysis of this problem has to start  
25 with the Board's Order of June 21, 1985, specifically on page



1 13.

2 The Board deferred its ruling on paragraph 2-C and  
3 found that the letter that had been referred to and made a  
4 part of the Amended Contention as submitted by the  
5 Intervenors, contained specific allegations of intimidation  
6 and harassment contrary to what was summarized in the NRC.

7 The Board also believed it was necessary, in my  
8 judgment in reading the Order, that in addition to those  
9 specific allegations it was necessary for the meaningful  
10 litigation of this particular issue, that the Intervenors  
11 identify the witnesses that they would bring forth to carry  
12 the burden on this allegation of harassment of Comstock  
13 inspectors.

14 It is my view that with respect to Exhibit 15, the  
15 mere allegations contained in that exhibit weren't enough.  
16 The Intervenors had to come forward with some demonstration of  
17 how they were going to prove up their case, and the Board  
18 suggested the most obvious means was to identify witnesses  
19 and indicate the general nature of their testimony.

20 The Board provided a further opportunity to provide  
21 additional allegations which had been alluded to in the  
22 Amended Contention as filed by the Intervenor.

23 It is my judgment the Board did not intend that the  
24 Intervenors be permitted discovery with respect to this  
25 matter. That is discovery of either the NRC Staff or the

1 Applicant with respect to this matter. It is clear to me that  
2 what the Board had in mind was that the Intervenor had a  
3 chance to elucidate more particularly the claims that they had  
4 made originally in their filing of their amended contention,  
5 and for that they needed to rely on their own information and  
6 their own knowledge as to facts attending intimidation and  
7 harassment of Comstock inspectors.

8 So, I read nothing in the Board's order that would  
9 authorize or suggest that discovery of the Staff and the  
10 Applicant was appropriate in this instance. Indeed, when the  
11 Board provided for such discovery in the earlier order of the  
12 Prehearing Conference Order, the Board quite clearly without  
13 any question, provided for that discovery right. The absence  
14 of specification of discovery in the June 21 Order tells me  
15 that the Board did not intend such a result.

16 Just as importantly, of course, is that under 2.740  
17 of the Commission's Regulations, discovery on this issue is  
18 really not permitted until an issue in controversy on the  
19 matter of intimidation and harassment of Comstock inspectors  
20 if it has been admitted by the Licensing Board.

21 That not being the case, that is a further reason  
22 why in the Applicant's judgment, discovery is not permitted.

23 Finally, I believe that -- if there is a finally --

24 JUDGE BRENNER: Mr. Gallo, I didn't hear you at the  
25 very end.

1 MR. GALLO: Intervenors cite two sections in support  
2 of their position. The one section, 2.740(f) provides the  
3 normal rights to a party who has been refused discovery. But  
4 that section deals with the issue of a Motion to Compel. That  
5 is simply not appropriate and applicable to the instant case  
6 because we are not in a discovery mode.

7 The other cite that I wrote down was 2.740(e)(1).

8 JUDGE BRENNER: That deals with supplementation, I  
9 believe.

10 MR. GALLO: Yes. And I frankly don't see how that  
11 is applicable either in the context that we are dealing with.

12 I think the controlling regulation was 2.740. The  
13 section (b) of that regulation which makes it quite clear that  
14 discovery is not appropriate until after issues and  
15 controversy have been identified by the Licensing Board of  
16 discovery and still limited to that subject.

17 JUDGE BRENNER: Thank you, Mr. Gallo.

18 Mr. Treby, as part of the Staff's response, could  
19 you address the status as you see it of the outstanding Notice  
20 of Deposition sent by Mr. Guild, I believe on July 2nd?

21 MR. TREBY: Yes, Judge Brenner.

22 Addressing that matter first, my understanding after  
23 talking to Elaine Chan, counsel for the Staff who has been in  
24 communication with Mr. Guild, is that the Notice of Deposition  
25 listing the three people, while it is a broad notice of

1 deposition, at least for the purposes of this conference call  
2 was limited to the matter of having these people made  
3 available so that the Intervenor could obtain information  
4 with regards to the proposed Contention 2-C. And that that  
5 was the principal purpose for which this notice was currently  
6 pending.

7 Now, if the Notice of Deposition is requesting the  
8 presence of named Staff witnesses for depositions with regard  
9 to already admitted contentions, while there are certain  
10 provisions in the Regulations under Section 2.720 that provide  
11 that the Staff does not necessarily have to make named people  
12 available unless certain steps are taken, the Staff generally  
13 voluntarily does make people available as long as they have  
14 relevant information.

15 One of the named people there, Mr. Yin, had not  
16 worked on Braidwood for a very long period of time, if  
17 ever. And so I am not sure that he is someone who would be  
18 having relevant information.

19 With regard to the other named people, to the  
20 extent that they are going to seek depositions as to admitted  
21 contentions, the Staff is currently considering that. But I  
22 would be favorably inclined to that.

23 The problem as the Staff sees it, is that these  
24 people are being sought for discovery on a contention which is  
25 not yet admitted in this proceeding. As to that matter, we

1 believe that Section 2.740(b)(1) is the governing position.

2 And he believes that that provision of the  
3 Regulation only permits discovery of information or documents  
4 relevant to the subject matter involved in the proceeding.  
5 And that subject matter involved in the proceeding has been  
6 interpreted to be contentions admitted by the Presiding  
7 Officer in the proceeding.

8 That interpretation is one that is set forth in the  
9 Barnwell Order of the Licensing Board which is found at  
10 5NRC489, the 1977 case specifically at page 492.

11 The Board in its Order clearly has not yet admitted  
12 this Contention 2-C and therefore the provisions of the  
13 Regulations have not yet been met.

14 Furthermore, we agree with the analysis that  
15 Mr. Gallo set out with regard to the intention as we  
16 understood it, of the Licensing Board citing a further  
17 opportunity to exercise what information they may have on this  
18 subject of harassment and intimidation.

19 We would expect that as a Party to a proceeding what  
20 they wish to be pursuing are their interests as a Party. And  
21 their interests as a Party ought to be concerns which they  
22 presently have, or which members of their organization have,  
23 and which they have brought forward to be litigated in this  
24 proceeding.

25 I assume since they have listed it as a contention,

1 or a proposed contention which they seek to litigate, that  
2 they intend to have Mr. Seeders as one of their witnesses so  
3 that they can put on evidence with regard to his allegations  
4 with regard to harassment and intimidation.

5 If they have any other information on this subject  
6 -- and they made some allusions to the fact that people have  
7 come to them in private -- now is the time for them to be  
8 raising it. But, if they are just seeking to depose an  
9 inspector for the NRC to find out if he knows the names of  
10 anybody else who might, perhaps, have a concern. And then  
11 they are going to say, "Yes, this is an additional fact that  
12 supports this contention," it seems difficult to me, for them  
13 to make an argument that this is an interest of theirs that  
14 they want to pursue, since it doesn't yet appear to be an  
15 interest of their member, or else they would be able to answer  
16 that question.

17 Finally, let me address the Board's attention to the  
18 Inspection Report which is supposed to be raising this  
19 concern.

20 We talked about the fact that an alleged, an  
21 employee of the L. K. Comstock quality control department  
22 stated that he was harassed and intimidated. This was in --

23 JUDGE BRENNER: If you have the number that the  
24 intervenors used in their May 24th filing, that might be a  
25 good reference. Was it Tab No. 15, as I recall?

1 MR. TREBY: No. 16. Tab No. 16, and it was on page  
2 4 of that item. I guess it is Inspection Report 50-456/84-34  
3 and 50-457/84-32.

4 In any event, on page 4 where it talks about this  
5 allegation, it indicates that the inspector met with the  
6 alleged and four other quality control inspectors. If the  
7 purpose of this deposition is who these four other quality  
8 control inspectors are, this is knowledge they can get from  
9 the alleged himself, since he was also present.

10 There is no indication here that there is a need for  
11 them to acquire this information from the Staff. And the  
12 Regulations generally provide with regard to discovery against  
13 the Staff, that it is usually with regard to matters which are  
14 not readily available in the possession of other parties.

15 That doesn't appear to be the case here.

16 Further, I would indicate that that Inspection  
17 Report indicates an allegation filed. And the transcript of  
18 the deposition of Warnick and Mr. Keppler -- particularly when  
19 Mr. Warnick was being deposed -- would indicate that that  
20 allegation file was shown to representatives of the  
21 Intervenors. In fact, that was the source of the letter from  
22 Mr. Seeder.

23 For all these reasons, we believe that discovery, or  
24 the form of a deposition by Staff of Staff people is not  
25 appropriate here since it is for the purpose of developing a



1 contention and not for the purpose of gaining discovery on an  
2 already admitted contention.

3 JUDGE BRENNER: Thank you, Mr. Treby.

4 I think we are prepared to make a ruling at this  
5 time.

6 MR. GUILD: Judge, if I might be permitted a brief  
7 opportunity to reply.

8 JUDGE BRENNER: All right. Let me finish my  
9 sentence, and then I will let you.

10 We did consider this matter among the Board in  
11 advance of the call, and I think we predicted what positions  
12 of the Parties would be in our own minds. So I wanted you to  
13 know that we have had quite some discussion and conversation  
14 among the Board.

15 Having said that, Mr. Guild, please be brief.

16 MR. GUILD: Yes, sir.

17 I might state at first, that Mr. Gallo and I have  
18 had conversations on the same subject. There are  
19 interrogatories on the subject that are pending, that have  
20 been submitted to Applicant. They have until sometime next  
21 week, after our Friday, July 12th deadline, to respond. And  
22 we expect that an objection or answer will be forthcoming, but  
23 not in time for our obligation.

24 In short, let me just say that the NRC Staff  
25 possesses additional information with regard to the subject of

1 harassment and intimidation allegation, information that is  
2 uniquely in their possession or the possession of Applicant.

3 To say that we can get it from the allegeders belies  
4 the effectiveness of harassment and intimidation, if in fact  
5 such harassment and intimidation has taken place. It is  
6 unlikely that such persons would feel free to voluntarily come  
7 forward if they had been victims of harassment.

8 Litigation of this serious issue should not exclude  
9 information if it is available and in possession of the NRC  
10 Staff, and would aid this Board in its reaching a decision on  
11 this matter, and it should be made available.

12 If it be called discovery, we believe that matters  
13 in controversy have been preliminarily identified. Statement  
14 of consideration behind the discovery rule uses that term. We  
15 think it completely reasonable for the Board to permit  
16 discovery where a QA contention has been admitted. The  
17 subject of harassment has been identified as a matter in  
18 controversy, if it is not discovery but simply in furtherance  
19 of the Board's authority to allow the amendment of a pleading  
20 or to consider narrowing issues in controversy, and in the  
21 same end we think the Board should permit -- (Inaudible).

22 That is all I have to say.

23 JUDGE BRENNER: We didn't hear you at the end,  
24 Mr. Guild, neither the Board nor the Court Reporter.

25 MR. GUILD: I'm sorry.

1           If the matter is not discovery, but is in aid of the  
2 Board's power to permit the amendment of a pleading or to  
3 narrow the issues in controversy, we think to the same end the  
4 device of a deposition to obtain the necessary facts, should  
5 be permitted.

6           JUDGE BRENNER: All right. Thank you.

7           As I said, we considered the matter in advance, and  
8 even now as we have been hearing it, we are going to deny the  
9 motions, Mr. Guild.

10          Our starting point is the June 21st order at pages  
11 13 and 14. And in giving you a further, arguably a third  
12 opportunity to specify an admissible allegation under 2-C,  
13 that is the subject of alleged harassment and intimidation of  
14 L. K. Comstock quality inspectors, we did not contemplate or  
15 permit discovery. Had we contemplated it, we certainly would  
16 have expressly permitted it in a fashion similar to our  
17 specification of the deposition of Mr. Keppler in our earlier  
18 Order.

19          We viewed the situation as one in which you possibly  
20 had some information at your disposal. In fact, in your  
21 setting forth of 2-C, the inference we drew was at least the  
22 possibility that Rorem, or counsel for Rorem, was in contact  
23 with persons who could act as witnesses on this subject.

24          Having rejected 2-A and 2-B as being hopelessly  
25 vague, we nevertheless saw in the little bit you gave us on

1 2-C the possibility that there was at least one specific  
2 instance. However, one specific instance would not be enough  
3 to litigate meaningfully an allegation of a pattern,  
4 particularly since the contention itself or the documents it  
5 referenced, discussed the corrective action as to that one  
6 instance.k

7 And moreover, particularly since we also believed,  
8 as we set forth in the order, that Rorem et al would not be  
9 able to show us in balancing the late-filed contention  
10 factors, that it could make a meaningful contribution to the  
11 record on this unique type of issue without the assistance of  
12 witnesses and information available to Rorem on the specifics.

13 And if what you are telling me now is that in fact  
14 you have nothing more specific, I am telling you that had we  
15 known that at the time of our June 21st Order, we would have  
16 rejected the contention outright for lack of specificity and  
17 failure on the balance of the late-filed contentions.

18 Let me add, in addition to the general rule that  
19 there is no discovery before there is an admitted issue in  
20 controversy, it is particularly correct to apply that to the  
21 situation here because in this case we did permit some limited  
22 discovery. And you had that already going for you in addition  
23 to, as I say what we inferred was the certain knowledge by  
24 you of specific instances.

25 I don't remember if it was Mr. Treby or Mr. Gallo or

1 both who said this, but it also represents the Board's views.  
2 And that is, that if all you have is what the NRC inspector is  
3 going to tell you about persons he interviewed, then that is  
4 not sufficient for you to be able to put together the kind of  
5 well-based contention and identification of witnesses that we  
6 think would be required in order to admit an issue from Rorem  
7 et al on this particular subject. And I think we made that  
8 quite clear in the written order.

9 Furthermore, if you wanted to talk about  
10 supplementation of discovery, we are not pleased with the  
11 position that this is at least the second time, let me  
12 phrase it, not the first time, that counsel for Rorem et al is  
13 waiting until the eleventh hour, given certain deadlines we  
14 have imposed, to raise problems. This matter came up in the  
15 May 20th deposition. I read that deposition, particularly at  
16 pages 180 to 184, and if you had a problem back then we  
17 should have heard about it long before this week in July.

18 We set the date of July 12th for the receipt of the  
19 specification, Mr. Guild, because that was the very last  
20 date. We gave you as much time as we felt we could give you,  
21 and still provide a time for a response from the Applicant and  
22 Staff, namely a receive date of July 19th, which the Board  
23 could examine as a Board in advance of the upcoming Prehearing  
24 Conference.

25 We intend to attempt to rule on whatever further

1 filing and answers we receive either at the Prehearing  
2 Conference, or if that is not possible given the nature of the  
3 controversy, at least shortly after. But we would at least  
4 need to use the Prehearing Conference to clarify and sharpen  
5 the dispute, if necessary.

6 If Section 2-C is admitted based on your filing due  
7 tomorrow, we would at the Prehearing Conference discuss what  
8 time, if any, need be allocated for discovery of just that one  
9 matter. And one reason we would strive for ruling at the  
10 time of the Prehearing Conference is to see if we can still  
11 keep the discovery as of July 30th. But we would hear from  
12 the Parties on that part if and when such a subpart is  
13 admitted.

14 I guess in summary the time has come, and arguably  
15 has passed -- but in any event, based on the Board's schedule  
16 of tomorrow, the time has come for Rorem et al to set forth  
17 the specifics of this part of the QA contention. We provided  
18 the additional opportunity for this one part for the reason I  
19 indicated. We do certain inferences from your filing, and  
20 apparently those inferences were incorrect based on what you  
21 told us. But, we will wait until --

22 MR. GUILD: That's not the case, Judge, and we --

23 JUDGE BRENNER: All right, let me finish.

24 We will wait until we see your filing, in any event,  
25 and judge it on that basis and not on the basis of this call.



1           But, we are not permitting any further discovery on  
2   a contention that is not admitted, namely 2-C.

3           MR. GUILD: I did understand in trying to reach the  
4   Chairman earlier in the week to bring this matter to you, the  
5   earliest I knew that Staff would ultimately decline to make  
6   available --

7           JUDGE BRENNER: I find that not highly credible,  
8   Mr. Guild. I am sorry to phrase it that way. You knew you  
9   had this dispute raging at least around the time of the May  
10   20th deposition. Certainly around the time of the July 2nd  
11   letter you wrote.

12           Moreover, the important timeframe to keep in mind  
13   was your July 12th due date. And we recognize -- I recognize  
14   that there is always a balance between trying to resolve  
15   disputes among the Parties without bringing it to the Board  
16   and still being able to timely bring it before the Board. And  
17   we certainly appreciate it when Parties strive to resolve  
18   disputes without having to involve the Board, particularly  
19   disputes involving discovery.

20           However, given that July 12th date, you waited quite  
21   a long time.

22           In any event, that is not the reason for our ruling  
23   on discovery. But, as Mr. Cassell will recall, we had a  
24   similar problem when he asked for additional time to file the  
25   Amended Contention. And as he will recall, I'm sure, we



1 discussed our concern with raising a need for relief later  
2 than orderly procedure would dictate.

3 MR. GUILD: I didn't mean to make that matter one  
4 in dispute. I was going to finish by saying that in reaching  
5 Judge Cole in the absence of the Chairman, Judge Cole  
6 expressed the view that Intervenors should have available  
7 until Monday to make filing with respect to harassment and  
8 intimidation specification.

9 JUDGE COLE: I don't know whether I committed myself  
10 to that, Mr. Guild. I said the Board would take that under  
11 consideration.

12 MR. GUILD: All right. I'm just raising that,  
13 Judge. I understood to suggest that we would have that amount  
14 of time. But in any event that would be a matter that we  
15 would ask the Board to consider at this time, to give us to  
16 Monday --

17 JUDGE BRENNER: Well, we are not going to do that,  
18 and I will tell you why, Mr. Guild.

19 My concern is that I want to preserve, I have to  
20 preserve that July 19th receipt of an answer date from the  
21 Applicant and the Staff. And the problem is -- we didn't pull  
22 that July 12th date out of the air. I sat down and looked at  
23 the most time I could give you. If I hadn't done that, maybe  
24 I would have some more time to give you now. But, I have  
25 already given you the most time we could give you and still

1 allow for an orderly proceeding looking towards this  
2 Prehearing Conference.

3 And, perhaps this will assist you. The Board does  
4 not have to receive your filing tomorrow. As long as you can  
5 put it in the mail for us tomorrow, hopefully by expedited  
6 mail, that would be sufficient. The important thing is that  
7 the Applicant and the Staff receive your filing by tomorrow so  
8 that they can have the time we think they are entitled to to  
9 provide their July 19th response to your filing.

10 And, with modern technology, there should be a way  
11 among the Parties that you can get it into their hands in  
12 Chicago on an early basis tomorrow so that it could be looked  
13 at by the Applicant's representatives there, and telecopied or  
14 transmitted electronically by some other means such as word  
15 processors, to Washington. And if that can be worked out that  
16 would be one way to do it and you don't have to worry about  
17 the Board, as I said.

18 MR. CASSELL: Judge, this is Doug Cassell --

19 JUDGE BRENNER: Let me add that Parties who have a  
20 problem cannot assume that their Motion for Relief is going to  
21 be granted. And this discovery dispute is an example of that.

22 I had one other item, but go ahead Mr. Cassell,  
23 since you are on this subject, still.

24 MR. CASSELL: I don't mean to quarrel with your  
25 ruling, but I just want to assure you that Mr. Guild and we

1 have proceeded as expeditiously and diligently on this thing  
2 as we thought it possible to do.

3 JUDGE BRENNER: Our Order was dated June 21st, and  
4 that is almost three weeks ago.

5 MR. CASSELL: Judge, first of all we didn't get your  
6 June 21st order until June 24th.

7 JUDGE BRENNER: I'm sure that is correct.

8 I guess I don't want to get into each day,  
9 Mr. Cassell. I appreciate the fact that you disagree with  
10 me. I feel a little sense of deja vu, since we had this  
11 conversation on a previous conference call involving the  
12 filing date for the Amended Contention.

13 MR. CASSELL: I don't mean to run it down day by  
14 day. I only want to assure you and the other members of the  
15 Board, as well as counsel for the other Parties that we are,  
16 and have been at least for the period since you made the point  
17 unmistakably clear to me in mid-May -- perhaps early May it  
18 was -- we are quite aware of the need to proceed  
19 expeditiously.

20 In our judgment -- and we could go through it day by  
21 day if you would like -- we have proceeded as expeditiously on  
22 this particular issue as was reasonable. I am not suggesting  
23 that this would in any way affect your ruling that you have  
24 made on this issue. And indeed, you suggested this is not a  
25 ground for your ruling.

1 JUDGE BRENNER: That's correct.

2 MR. CASSELL: We are most impressed with the sense  
3 of expedition that the Board has directed. We have attempted  
4 to comply with that. We will continue to attempt to comply  
5 with it. We are in no way on this issue or any other issue,  
6 seeking to delay matters.

7 MR. GUILD: I would only add --

8 JUDGE BRENNER: You are ganging up in a sense that  
9 we have got multiple counsel making similar points for one  
10 party. I don't mind some leeway in allowing multiple counsel  
11 to speak, but not when it is on the same line.

12 MR. GUILD: I would only like to assure the Board  
13 members that we haven't sat in dependence on relief that we  
14 sought by this motion. And we ask the Board to reserve  
15 judgment until you see our pleading. But we did believe that  
16 this was a matter that we should press to try to get as much  
17 information as possible on the subject for the Board's  
18 information.

19 We will be submitting a particularization of the 2-C  
20 pleading tomorrow.

21 JUDGE BRENNER: The reason we are holding to the  
22 July 12th date is as I have indicated, and not as any punitive  
23 measure. As I have said, we have thought in advance how much  
24 leeway we could give, and we gave you as much as we thought we  
25 could give.

1           Frankly, I thought that was more time than would be  
2 necessary. But, as I said, we set it as an outside bound  
3 giving the things that would have to take place after, rather  
4 than trying to set the shortest time in which we thought you  
5 could do the job. Since we did proceed that way in arriving  
6 at the July 12th date, we now have the problem of not being  
7 able to extend it, given the other things that must occur.

8           It was my hope, however, that by relieving you of  
9 having to serve the Board, at least on the 12th, you could now  
10 work out other means among the Staff and the Applicant,  
11 because I realize that to serve the Board tomorrow you might  
12 have to do something today, and this might give you leeway  
13 until early tomorrow.

14           We do want to be served expeditiously, though. That  
15 is send it to us by some rapid mail so that we could have it  
16 in hand and study it in advance of receiving the Staff's and  
17 Applicant's July 19th answers.

18           That is all we have on that matter.

19           As I understand what you said, Mr. Treby, with  
20 respect to other requests for discovery, the Staff has them  
21 under advisement and the Staff is proceeding informally in  
22 this proceeding and not standing on a somewhat convoluted  
23 procedure set forth in the Regulations for discovery of the  
24 Staff.

25           MR. TREBY: That is correct.

1 JUDGE BRENNER: All right.

2 One matter in passing I wanted to mention for  
3 counsel for Rorem. According to my records, and they may be  
4 incorrect, I did not go back to the source documents, we have  
5 an outstanding Motion to Compel Rorem et al to supply some  
6 information arising out of the deposition I believe of  
7 Ms. Rorem herself. That motion has been filed by the  
8 Applicant. I have not seen an answer by Rorem.

9 MR. CASSELL: Judge, that is on an issue -- I am not  
10 sure you recall, we represent Ms. Rorem et al only on the  
11 quality assurance contention. That motion relates to a  
12 separate contention and I have talked with Ms. Rorem about it  
13 this week and I understand that she is preparing to file a  
14 response by the date which I believe is tomorrow, although I  
15 am not certain.

16 But we were simply unable, because of limited  
17 resources, to undertake to represent her on that contention.  
18 Although we did provide an attorney to sit with her at the  
19 deposition. But I understand she is taking care of that.  
20 But, we do not represent her on that matter.

21 JUDGE BRENNER: All right. Your answer, as counsel,  
22 explaining your position is satisfactory to me. And let me  
23 tell you why I find it so.

24 I do understand that substantively you are not  
25 representing Rorem et al on the Emergency Planning Issue.



1     However, as the only counsel representing her in the case --  
2     that is you and your colleagues at BPI -- I certainly expect  
3     to be able to take advantage of that so that I am assured that  
4     her counsel can explain all the procedural requirements to  
5     her, even when they relate to the other issue. And your  
6     answer indicates that you, in fact, agree with me and have  
7     done that.

8             MR. CASSELL: Subject only to perhaps a minor  
9     caveat, Judge. We can -- on things like that obviously out of  
10    consideration both for her and for the proceeding, we do  
11    attempt to give her some basic advice. But, for example, if  
12    there are legal issues raised by the Applicant's motion which  
13    would require legal research, study of cases and so forth, and  
14    advice based on that kind of analysis, we would love to be  
15    able to do that, but we simply don't have the resources.

16            So, all we can really do for her on those things is  
17    just kind of off the top of your head kind of basic, minimal,  
18    informal advice. But we don't have the resources,  
19    unfortunately, to do the sort of work on that kind of issue  
20    that we would where we have undertaken to represent her.

21            JUDGE BRENNER: My discussion was not extending into  
22    that area, only because we did not have to. At this point I  
23    was thinking of exactly what you did, that is advising her  
24    that there has been a motion filed against her which she has  
25    to answer or stand the risk of being in default.



1 MR. CASSELL: She understands that, sir.

2 JUDGE BRENNER: And you have done that.

3 Now I am not saying I agree with you on the second  
4 point either. And the reason I am being lawyerlike and  
5 hedging is I don't know if there may not come a time later on  
6 in this case where I become concerned as to her lack of  
7 counsel on a particular matter, and there may be some overlap  
8 between substantive and procedural matters.

9 But we don't have to talk about things in abstract  
10 terms. If something like that comes up we can apply any  
11 discussion to the particular situation.

12 All right. We have nothing further at this time.

13 I thank you all for your time. We will be seeing  
14 some or all of you in Illinois shortly.

15 Thank you very much.

16 Incidentally, we have a transcript, as I mentioned,  
17 a transcript of this conference. If anybody wants it, I don't  
18 know what the procedures are for obtaining it through the  
19 court reporting service, but -- is there anyone who wants to  
20 tell the Court Reporter now that they want to order a copy of  
21 the transcript?

22 MR. CASSELL: At least at this time I don't think we  
23 need a transcript. But if we do upon reflection, we will get  
24 in touch with the reporter.

25 JUDGE BRENNER: I am not going to issue a written

1 order, and that is one benefit of having a transcript. But  
2 presumably your notes reflect for your own purposes what the  
3 ruling is.

4 If you change your minds in the future, I am sure  
5 Staff counsel or my secretary or Staff counsel's secretary can  
6 assist you in obtaining a copy from the Court Reporter.

7 MR. CASSELL: Thank you very much, Judge.

8 JUDGE BRENNER: All right. Goodbye.

9 MR. TREBY: Is the Court Reporter still on?

10 JUDGE BRENNER: Yes.

11 MR. TREBY: I'm with the NRC Staff. I assume the  
12 Staff will be getting a transcript.

13 JUDGE BRENNER: Yes.

14 MR. TREBY: Fine.

15 JUDGE BRENNER: Okay. Thank you. Goodbye.

16 JUDGE COLE: Goodbye Dixon.

17 JUDGE CALLIHAN: Goodbye.

18 (Whereupon, at 11:55, the telephone conference was  
19 concluded.)

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1 CERTIFICATE OF OFFICIAL REPORTER

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4  
5 This is to certify that the attached proceedings  
6 before the United States Nuclear Regulatory Commission in the  
7 matter of: COMMONWEALTH EDISON COMPANY (Braidwood Nuclear Power  
8 Station, Units 1 and 2)

9 Name of Proceeding: Telephone Conference Call

10  
11 Docket No.:

12 Place: Bethesda, Maryland

13 Date: Thursday, July 11, 1985

14  
15 were held as herein appears and that this is the original  
16 transcript thereof for the file of the United States Nuclear  
17 Regulatory Commission.

18  
19 (Signature) Mimie Meltzer

(Typed Name of Reporter) Mimie Meltzer

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23 Ann Riley & Associates, Ltd.  
24  
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