

ORIGINAL

UNITED STATES
NUCLEAR REGULATORY COMMISSION

IN THE MATTER OF:

DOCKET NO: 50-456
50-457

COMMONWEALTH EDISON COMPANY

(Braidwood Nuclear Power Station,
Units 1 and 2)

LOCATION: JOLIET, ILLINOIS

PAGES: 95 - 277

DATE: TUESDAY, JULY 23, 1985

ACE-FEDERAL REPORTERS, INC.

Official Reporters
444 North Capitol Street
Washington, D.C. 20001
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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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In the Matter of: :
:
COMMONWEALTH EDISON COMPANY : Docket No. 50-456
:
50-457
(Braidwood Nuclear Power :
Station) : PREHEARING CONFERENCE
:
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Will County Courthouse
14 West Jefferson Street
Joliet, Illinois 60431

Tuesday, July 23, 1985

The prehearing conference in the above-entitled matter
convened at 10:00 a.m.

BEFORE:

JUDGE LAWRENCE BRENNER, Chairman
Atomic Safety and Licensing Board
Washington, D. C.

JUDGE RICHARD F. COLE, Member
Atomic Safety and Licensing Board
Washington, D. C.

JUDGE A. DIXON CALLIHAN, Member
Atomic Safety and Licensing Board
Washington, D. C.

-- continued --

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24 On behalf of Intervenor Bob Neiner Farms
25 ALLEN BOCK, ESQ.

C O N T E N T S

LAY-IN - INTERVENORS' PROPOSED LICENSING CONDITIONS IN
REGARD TO CONTENTION # 1, Page 138.

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HARRASSMENT CONTENTION, Pages 210 through 214.

1 P R O C E E D I N G S.

2 JUDGE BRENNER: Good morning, this is a
3 prehearing conference held pursuant to a notice issued
4 previously and under section 2.752 of the Nuclear
5 Regulatory Commission's regulations. The case, as you all
6 know, is the matter of Commonwealth Edison Company for
7 their request for operating licenses for the Braidwood
8 Nuclear Power Station, units I and II.

9 If you can't hear me back there, raise your hand. I
10 don't want to deafen my colleagues or the court reporter
11 -- all right, I'll speak up.

12 Let me introduce the Board first. On my right is
13 Judge A. Dickson Callihan, who is a nuclear physicist; on
14 my left is Judge Richard F. Cole, who is an environmental
15 engineer. I am Lawrence Brenner, I am the lawyer-chairman
16 of this Board. Some of you have met my colleagues in
17 other recent cases.

18 Let's get the appearances of the parties at this
19 time. Mr. Guild, do you want to start off?

20 MR. GUILD: Yes, Mr. Chairman. My name is
21 Robert Guild. I represent the Intervenor, Bridget Little
22 Rorem, et al., and with me is Douglass Cassel, also
23 representing Intervenor.

24 JUDGE BRENNER: And Mrs. Rorem is here also?

25 MRS. ROREM: Yes.

1 JUDGE BRENNER: And she's planning to represent
2 herself for the emergency planning contention; is that
3 right, Mrs. Rorem?

4 MRS. ROREM: Yes.

5 JUDGE BRENNER: As I discussed in our previous
6 conference called you might like to refer to your other
7 counsel for some procedural advice if that should become
8 necessary because the Board can of course not be in the
9 position of representing you and at the same time be an
10 impartial Board in this proceeding. You might be more
11 comfortable closer to your lawyers if you can work that
12 out.

13 MRS. ROREM: There seems to be a scarcity of
14 seats --

15 JUDGE BRENNER: Why don't you get rid of that
16 box.

17 MR. BOCK: I'm Allen Bock, representing the Bob
18 Neiner Farms, Intervenor in this matter.

19 JUDGE BRENNER: Welcome, Mr. Bock.

20 MR. GALLO: Good morning, Judge Brenner,
21 members of the Board, my name is Joseph Gallo with the law
22 firm of Isham, Lincoln & Beale, 3 First National Plaza,
23 Chicago, Illinois. To my left is my partner, Michael
24 Miller, same firm. Together we represent Commonwealth
25 Edison Company the Applicant in this proceeding. Mr.

1 Miller will address specifically the issue of the alleged
2 harassment and intimidation of QC inspectors of the
3 Comstock Electric Company.

4 JUDGE BRENNER: All right. We are going to
5 start. If we get to the point where I feel it's important
6 to have the Staff here we'll work around it in some
7 fashion to accommodate them to the extent we can, but we
8 are not going to sit here with a roomful of people and
9 wait for them either.

10 I have seen for the first time here a suggested
11 schedule from Mr. Gallo. We appreciate that. We have our
12 own schedule which I think probably incorporates the same
13 matters although not necessarily in the same order.

14 I cannot give you my typed version because I have
15 some notes for the Board on it, but I will list the items
16 for you briefly at this time. My listing is just a
17 shorthand, not meant to encompass every subissue within
18 each category.

19 The first item we would get to would be the
20 Commonwealth Edison motion for summary disposition of
21 Rorem contention 1(c), the -- one subpart of the emergency
22 planning contention.

23 We would include in that the answers to the Board's
24 questions relating to that contention. I will then branch
25 out to ask about the status of Rorem contention 1(a), and

1 1(b).

2 That would lead into the next related subject which
3 would be Commonwealth Edison's two motions to compel
4 discovery related to the emergency planning contention.
5 One motion arises out of the deposition of Mrs. Rorem and
6 the other out of written interrogatories.

7 The next matter we would take up would be the
8 Applicant's motion for summary disposition of Neiner
9 contention 1, which relates to the transmission lines.
10 After that we would take up the subject of Neiner
11 contention 4(a) and 4(b), which relates to the postulated
12 explosion of the railroad train of explosives.

13 After that we would take up the subject of quality
14 assurance, which includes several sub subjects, including
15 a possible stipulation as to harassment which we have
16 looked at but we understand is not -- has not yet been
17 agreed upon by the parties; and the possible schedule,
18 which we did receive at the end of last week.

19 Those would be the major matters. At the end we
20 would discuss to the extent the parties need some further
21 information from the Board, proposed findings which would
22 arise after the evidentiary hearings, after different
23 stages of the evidentiary hearing, in fact. And, also, if
24 the parties need any explanation of cross-examination
25 plans, although those of you who have been involved in

1 other proceedings probably do not need that explanation.

2 Ms. Chan, we did not settle your position on the
3 case while you weren't here but I did want to start with
4 preliminary matters.

5 MS. CHAN: Thank you. My name is Elaine Chan,
6 counsel for NRC Staff. With me today is Stuart Treby,
7 he'll be arriving shortly; and Bruce Berson, from region
8 3, for NRC Staff. Thank you.

9 JUDGE BRENNER: Taking up the matter of
10 Commonwealth Edison's motion for summary disposition of
11 Rorem contention 1(c), which in my own shorthand I would
12 label medical treatment of operating personnel, or
13 personnel at the site: The motion for summary disposition
14 was filed in advance of our set schedule on June 11,
15 1985. We received an answer from the Staff dated July 11,
16 1985, which supported the motion. Mrs. Rorem, we have
17 received no answer from you. As I told your counsel on a
18 conference call and as they assured me they told you, the
19 risk of not answering a motion, especially a motion as
20 important as one for summary disposition, is that of
21 default, or tantamount to default.

22 My first question is, am I correct that you have not
23 answered? And, if so, how do you see the status of that
24 contention 1(c), given that failure to answer?

25 MRS. ROREM: Correct. They have not answered.

1 I decided that that aspect of the contention is not
2 that important to me in light of various other parts. So
3 I have not responded.

4 JUDGE BRENNER: Are you withdrawing it?

5 MRS. ROREM: I told Elaine Chan that I did not
6 intend to file anything so that -- and I told Victor
7 Copeland that I wasn't going to file anything.

8 JUDGE BRENNER: Mrs. Rorem, I appreciate that
9 you are appearing pro se; that is, without attorney on
10 that issue, although you do have attorneys on another
11 issue. You cannot just sit back and let a required filing
12 time pass in silence because then the Board is left in
13 even more ignorance that we usually are, and we like to
14 keep that state of ignorance only to the necessary limited
15 amount. If you are not going to file an answer you should
16 file something, one sentence, that says you are not going
17 to file an answer.

18 MRS. ROREM: Saying I'm not going to.

19 JUDGE BRENNER: We have engaged in some work
20 regarding that contention, not knowing what you were doing
21 with it.

22 I still don't understand whether you intend to
23 withdraw the contention or not? It might be a moot point,
24 given your failure to answer, frankly, but -- what do you
25 mean when you say it's not that important to you?

1 MRS. ROREM: Judge Brenner, I have found that
2 the entire matter of the emergency planning contention is
3 a difficult one even to discuss at this point in time
4 because of the fact that the plan by which emergency
5 procedures will be --

6 JUDGE BRENNER: Could I cut you off at the risk
7 of being rude and then I'll let you proceed if you still
8 think you want to. At this time I only intended to
9 discuss 1(c), and the reason for separating that one out
10 is it does not depend on the long-range plans which
11 everybody fully agrees with you are still plans, still
12 being prepared.

13 MRS. ROREM: That is precisely it.

14 JUDGE BRENNER: I might say, if the Applicant
15 and Staff knew that Mrs. Rorem was not filing an answer,
16 knowing she was pro se and knowing that silence is not the
17 proper way to proceed, somebody could have informed the
18 Board. I guess I have the same comment to Messrs. Cassel
19 and/or Guild, if they knew.

20 We asked some questions pertinent to the Applicant's
21 motion for summary disposition, even though as I hear you
22 you are, in effect, withdrawing the contention and we'd
23 like to get the answers to those questions. That was the
24 order we issued on July 16, 1985. We asked, in the first
25 instance, for the participating parties -- and that is any

1 and all -- to identify any hospitals closer to the
2 Braidwood site than the Saint Joseph Medical Center in
3 Joliet, Illinois, which Commonwealth presently plans to
4 use as the hospital to which injured on-site personnel
5 would be taken in case of emergency.

6 Mr. Gallo?

7 MR. GALLO: Judge Brenner, based on the Board's
8 order and the questions on this matter, I have the
9 following information. There are three other hospitals
10 that are within about the same distance as the Saint
11 Joseph's Medical Center. There's also three helicopter
12 services that are available in Chicago, the city of
13 Chicago. These services could provide the Medivac service
14 suggested in the board's order.

15 I have with me today --

16 JUDGE BRENNER: We were just asking questions,
17 not suggesting anything. Go ahead.

18 MR. GALLO: I have with me today two
19 individuals. One is the coordinator of the Braidwood
20 emergency plan who determined the distances from the
21 Braidwood site to the four hospitals I referred to and the
22 running times by ambulance. That witness is a Ms. Laurie
23 Literski. I refer to her as a witness but I meant to say
24 that individual.

25 I also have with me today Dr. Roger Linneman, who

1 filed an affidavit in support of the motion for summary
2 disposition who would be prepared to explain the basis for
3 the selection of Saint Joseph's Medical Center over the
4 other hospitals, as well as to provide his views with
5 respect to the need of Medivac helicopter services.

6 I would propose, if the Board would indulge me, to
7 call these two individuals as witnesses, have them sworn,
8 and provide answers to the questions that are included in
9 the Board's order.

10 I recognize that this is an extraordinary procedure
11 at this stage but it might be the most expeditious way to
12 get authoritative information on the record.

13 JUDGE BRENNER: What we had originally, and I
14 can tell you and I'm not rejecting your suggestion, might
15 adopt it, but what we had in mind originally is for you to
16 give us the information and then to the extent we still
17 thought it material we could have it confirmed in an
18 affidavit later. I suppose we could take advantage of the
19 presence here of ourselves and the other parties, and the
20 two persons you want to use for the information, to get
21 sort of an oral affidavit.

22 The status of the contention right now is that it is
23 no longer in controversy, based on what Mrs. Rorem said.
24 However, we want the answers to our questions in order to
25 determine how, finally, to dispose of the matter.

1 MR. GALLO: How would the Board like to
2 proceed? I'm prepared to provide the information.

3 JUDGE BRENNER: Why don't you give me the
4 information that Ms. Literski would have provided first.

5 MR. GALLO: Can I have just a moment? I want
6 to make sure I have it right.

7 Judge Brenner, members of the Board, the hospital
8 that has been selected by Commonwealth Edison to provide
9 medical services for the Braidwood station and indeed,
10 with which a current letter of agreement exists, is called
11 the Saint Joseph's Medical Center located here in Joliet
12 approximately 25 miles from the station.

13 There is -- and the ambulance running time from the
14 station to the hospital is 22 minutes.

15 There is a hospital located in Morris, Illinois
16 called the Morris Hospital. It is approximately 20 miles
17 from the Braidwood station and the ambulance running time
18 is 19 minutes.

19 There are two hospitals located in Kankakee,
20 Illinois. One is called the Riverside Hospital, and that
21 is approximately 20 miles from the station -- I should say
22 southeast of the station. The ambulance running time to
23 this hospital is 19 minutes. The fourth hospital and the
24 second hospital located in Kankakee is called Saint Mary's
25 Hospital and it is approximately 25 miles southeast of the

1 station. The ambulance running time is 22 minutes.

2 The ambulance running times were obtained from the
3 fire chief of the Braidwood fire station, who is in charge
4 of the ambulances in that area. The station is located
5 approximately two city blocks from Braidwood station, so
6 that the availability of the ambulance service is within
7 two or three minutes from the station. The reason that
8 the running time is 22 minutes to Saint Joseph's Medical
9 Center, although it's 5 miles from the station, is simply
10 the access to U.S. 55, which makes the transportation move
11 much faster than to the other locations, even though they
12 are closer.

13 For example, the Morris Hospital is 20 miles
14 Northwest of the station, approximately 5 miles closer,
15 but the ambulance running time is 19 minutes, only three
16 minutes difference.

17 JUDGE BRENNER: Let me stop you at that point.
18 We had invited all parties to supply the information, all
19 those who wanted to. Do any of the other parties have
20 any, either consistent or different information that they
21 want to supply with respect to the location of other
22 hospitals or ambulance running times?

23 MS. CHAN: The NRC Staff would like to
24 corroborate the Applicant's information about the
25 availability of hospitals, the distance and the running

1 time as provided by its emergency planning personnel in
2 region 3.

3 JUDGE COLE: So you'd agree with that?

4 MS. CHAN: Yes, we do.

5 JUDGE BRENNER: Including the running times?

6 MS. CHAN: Yes. To the best of our knowledge
7 that's the right time. We have not actually clocked the
8 running times by car; however, given the distance and the
9 speed limits on the various highways, we agree with the
10 Applicant's information.

11 JUDGE BRENNER: You wouldn't have any better
12 information than the Braidwood fire chief, in other
13 words?

14 MS. CHAN: That's correct.

15 JUDGE BRENNER: Mrs. Rorem?

16 MRS. ROREM: I'm sorry, but I beg to differ.
17 Mr. Gallo stated that Saint Mary's Hospital was 25 miles
18 from the Braidwood station and it is less than half a mile
19 from Riverside Medical Center. I mean they are at most
20 half a mile apart, so the distance is not as great as he
21 stated that it was.

22 JUDGE BRENNER: I'm sorry. Which was Saint
23 Mary's Hospital?

24 MRS. ROREM: It's the fourth hospital he
25 mentioned.

1 JUDGE BRENNER: I see. Tell me again how far
2 you think it is?

3 MRS. ROREM: If Riverside is 20 miles, which
4 seems accurate to me, it is 20.5 miles.

5 JUDGE BRENNER: I see. Did you want to add
6 something else, Mrs. Rorem?

7 MRS. ROREM: No.

8 MR. GALLO: Judge Brenner?

9 JUDGE BRENNER: Let me state that given this
10 information we agree that there is no appreciable
11 difference among the choice of the four potential
12 hospitals that could have been chosen from the point of
13 view of time and distance. To be sure there are some
14 distances but even taking your distance as correct, Mrs.
15 Rorem, the distances are not material.

16 The reason we asked the question was we wanted to
17 assure ourselves that the Applicant was not simply
18 choosing a hospital with which it already had prior
19 arrangements solely for that reason and ignoring another
20 potential hospital that might have been significantly more
21 accessible to the site. We are satisfied that's not the
22 case, based on the information.

23 We do want the information to be confirmed as soon
24 as possible by affidavit and we'll let the Applicant and
25 Staff file such affidavits promptly. This is not a big

1 deal. You can decide who the best affiant would be. It
2 sounds like the Braidwood fire chief might be one
3 potential affiant, as opposed to one receiving the
4 information from the fire chief.

5 MR. GALLO: I want to correct me such, Judge
6 Brenner. I stated on the record that the fire station was
7 approximately two city blocks from the station. I now
8 have been corrected, as the road turns, from the front
9 door of the fire station to the gate at Braidwood, it's
10 2.3 miles.

11 JUDGE BRENNER: I resisted asking you what city
12 the first time you said that.

13 MR. CASSEL: Judge, I would like to clarify the
14 record on one point related to this issue when an
15 opportunity arises.

16 JUDGE BRENNER: All right. You can wait until
17 the end, however?

18 MR. CASSEL: Surely.

19 JUDGE BRENNER: You want to talk about your
20 representation?

21 MR. CASSEL: I gave you some misinformation in
22 our last conference call because I did not understand the
23 procedural posture of this other contention when you asked
24 me about that and I wanted to clarify it for the record.

25 JUDGE BRENNER: Why don't you do it now, then?

1 MR. CASSEL: You asked me in our last telephone
2 conference call whether I had advised Mrs. Rorem of the
3 due date of her answers to the motion for summary
4 disposition. I was not, frankly, even aware of the motion
5 nor summary disposition on that contention to which I had
6 not been paying any attention because we are not involved
7 in that part of the case. I had discussed with Mrs. Rorem
8 the due date for the answers relating to the document
9 requests or interrogatories --

10 JUDGE BRENNER: Which dates she didn't meet
11 either, but we'll get to that next.

12 MR. CASSEL: That was the only matter I had
13 discussed with her. I had not discussed this matter and
14 it was simply a misunderstanding on my part for which I
15 apologize.

16 JUDGE BRENNER: I don't think you have to
17 apologize. I believe I did ask you about the answers to
18 the motion to compel during the conference call. I only
19 asked you about one of them because I had not yet received
20 the motions to compel the answers to the written
21 interrogatories at the time of the conference call and I
22 didn't know about it, but I also asked you generally
23 whether you have informed Mrs. Rorem that a failure to
24 answer any required motion would be a default.

25 MR. CASSEL: I did not give her that kind of

1 general advice. There had been no occasion for it that I
2 knew of.

3 JUDGE BRENNER: I think common sense does not
4 always follow legal sense in these proceedings but I think
5 in the case of failing to answer motions filed against
6 you, common sense would dictate an answer.

7 Mr. Gallo, you wanted to cover the second point. We
8 did ask another question in the order which you have
9 alluded to relating to the possibility of providing
10 back-up transportation of injured on-site personnel by
11 so-called Medivac helicopter. The second part of that
12 question included the consideration of whether such backup
13 would make it practical to achieve faster transportation,
14 depending on where helicopters were, of course.

15 We have no objection to hearing from Dr. Linnemann,
16 but you decide for yourself how we can most concisely get
17 the information.

18 MR. GALLO: Let me, if I might, identify the
19 services and the running times associated with those
20 services and then we'll see where we go. Ms. Literski
21 canvassed the area and located three services that
22 provided Medivac helicopter services. All three are
23 located in the city of Chicago. One is called Med-Star,
24 associated with Saint Mary's of Nazareth Hospital in
25 Chicago, the second is called Air Excellence and they are

1 based in -- both at the Aurora airport and apparently they
2 fly out of Aurora, Illinois, as well as the city of
3 Chicago. The third service is provided by the University
4 of Chicago under the acronym of UCAN. The running time
5 from Med-Star, located at Saint Mary's of Nazareth
6 Hospital in Chicago is computed in this fashion: From the
7 time of the telephone call requesting the service, it
8 takes three to five minutes to be airborne. It is 30 to
9 35 minutes to the Braidwood site, and once the pickup is
10 made, it is then 15 minutes to the Saint Joseph's Medical
11 Center in Joliet.

12 JUDGE BRENNER: How far is Braidwood from
13 Chicago? Isn't it some 45 miles, roughly?

14 MR. GALLO: Approximately 65 miles from the
15 loop.

16 JUDGE BRENNER: I'm sorry I interrupted you --
17 okay.

18 MR. GALLO: If I might just have a moment?

19 (Discussion off the record.)

20 MR. GALLO: I'm informed that Air Excellence
21 also flies out of Saint Mary's of Nazareth Hospital of
22 Chicago, and the running time would be about the same as
23 that for Med-Star. It is not clear to me at this point
24 just what the availability of their service is out of the
25 Aurora airport, but I think we can take notice of the fact

1 that Aurora is closer to Braidwood than the loop area of
2 the city of Chicago.

3 JUDGE BRENNER: We are looking at a map now and
4 we can check the distance later. Do you know what it is?

5 MR. GALLO: No, I don't.

6 (Discussion off the record.)

7 MR. GALLO: The best estimate is 35 miles,
8 Judge Brenner.

9 JUDGE BRENNER: Of course as any of this is
10 definitive we'll get sworn information.

11 MR. GALLO: I'm informed Air Excellence does
12 not provide the service on a 24-hour basis. An
13 organization that does is called a first response team and
14 they do not consider themselves a first response team.

15 If one focuses on the running times from the city of
16 Chicago to Braidwood, and then from Braidwood to the Saint
17 Joseph's Medical Center, it appears from the running times
18 that it is much more efficient and faster to use the
19 ambulance service from the Braidwood fire station.

20 JUDGE BRENNER: That's your bottom line at this
21 time?

22 MR. GALLO: Yes. I am also prepared to present
23 Dr. Linnemann, who would explain from a medical
24 standpoint, the need for that type of service versus the
25 ambulance service.

1 JUDGE BRENNER: I think I could infer some of
2 that information from pages 3 to 5 of his affidavit, as I
3 recall.

4 We were talking about, I should add, Medivac to
5 Saint Joseph's Hospital, not the further transfer from
6 Saint Joseph's Hospital to the Chicago hospital, because
7 we also understood that the time involved in that transfer
8 -- that is for long-term care of hospital contamination or
9 radiation injury is not needed in the same time frame
10 after stabilization, again based on the uncontested
11 affidavit.

12 I guess I'd like to know a little more about how
13 carefully the Applicant checked to make sure that there
14 were not closer helicopter services. There are airports
15 that are closer.

16 MR. GALLO: I'm informed, Judge Brenner, that
17 the Braidwood fire chief was consulted on this matter as
18 well as the Saint Joseph's Medical Center. Saint Joseph's
19 Medical Center has a helipad and they are involved in that
20 kind of activity; that is, the use of Medivac helicopters,
21 and they identified the Med-Star service, the Air
22 Excellence service, and the University of Chicago service,
23 for Ms. Literski. She talked personally to
24 representatives of Med-Star and Air Excellence and that's
25 where she got the running times.

1 JUDGE BRENNER: All right. But two things we
2 do not know would be the running time from Aurora,
3 although we can make some guesses based on the approximate
4 distance, and/or the hours that service would not be
5 available from Aurora.

6 MR. GALLO: I'm not certain at this point that
7 indeed service is available since I see in the notes that
8 Air Excellence is based in Aurora airport; a presumption
9 arises that they might provide that service from the
10 Aurora airport as opposed to the hospital located in
11 Chicago, but I would certainly agree to check that out
12 further and get more definite information on that point.

13 JUDGE BRENNER: Did the Staff have any
14 information on our question 2(b), relating to a possible
15 Medivac helicopter?

16 MS. CHAN: No. The Staff did not independently
17 investigate Medivac helicopters.

18 JUDGE BRENNER: Mrs. Rorem, did you make any
19 effort to supply any information?

20 MRS. ROREM: No.

21 JUDGE BRENNER: No. Give us a moment, please.

22 (Discussion off the record.)

23 JUDGE BRENNER: All right. The matter stands
24 as follows at this time. As we said, there has, in
25 effect, been a withdrawal of the contention. In any event

1 on our own we are prepared to grant summary disposition of
2 the contention, subject to two matters, however. One
3 matter is to receive the affidavits confirming the
4 locations of the other hospitals and the running times by
5 ambulance, from knowledgeable affiants.

6 The second matter is, we still have some interest in
7 assuring that a full inquiry has been made with respect to
8 the possible availability of backup helicopter -- we
9 emphasize, as a backup, if and when a situation might
10 require such service. And we need some further
11 information confirmed in affidavits to make that
12 determination. Of course the Applicant and Staff need
13 that further information to make that determination for
14 themselves in the first instance.

15 We see our positions here as consistent with what
16 must be the parties' interests, rather than in an
17 adversarial one. If the closest helicopters are, in fact,
18 65 miles away, then it's clear they offer no better
19 service than use of ambulance. However, if there are
20 helicopters significantly closer that can get a patient to
21 a hospital faster than the approximately 22 minutes, such
22 back-up service could be arranged for in advance as a
23 back-up service.

24 Obviously we are not interested in somebody starting
25 up a helicopter service. It depends on what services

1 exist in the area, and Aurora is one likely location to
2 get some further information from.

3 We'll look at the affidavits to decide how
4 scrupulous the inquiry was, to be as reasonably assured
5 when you can when you are disproving a negative, that
6 there are no other services available. But, subject to
7 those matters, we are going to be prepared to dismiss the
8 contention. We may have some follow-up questions after we
9 receive the affidavits, but at this point no testimony
10 need be prepared for contention 1(c), and we will confirm
11 all this in writing eventually but we will await the
12 receipt of the affidavits.

13 So, just in case there are some matters that still
14 concern us, it would behoove everyone to supply the
15 information promptly. But we will not set a specific
16 date.

17 I would like to turn our attention, now, to the
18 remaining portions of Mrs. Rorem's contention 1, which, as
19 we understand it, are 1(a) and 1(b). Do those still
20 remain in controversy, Mrs. Rorem?

21 MRS. ROREM: Yes, they do.

22 JUDGE BRENNER: Just to double-check something
23 for my own benefit, we received notification in a May 31,
24 1985 status report from the Applicant, that the reference
25 to hospitals was being deleted. I think there was a typo,

1 when the deletion -- report referred to subpart "C." My
2 guess is that the term "hospitals" is being deleted from
3 subpart "B"; is that right, Mrs. Rorem? You look like you
4 don't know what I'm talking about.

5 MRS. ROREM: I'm trying to remember the place
6 in which the word "hospitals" --

7 JUDGE BRENNER: I have it in front of me. You
8 don't have your own contention in front of you?

9 MRS. ROREM: No, I don't. I'm sorry.

10 JUDGE BRENNER: Does somebody have a copy for
11 Mrs. Rorem?

12 MR. CASSEL: I have a copy.

13 JUDGE BRENNER: Hospitals never appeared in
14 subpart C, although the contention relates to hospitals.

15 MRS. ROREM: It was subpart "B."

16 JUDGE BRENNER: All right. I don't mean to
17 jump ahead to the proposed schedule we received from the
18 parties except to this limited extent. There is a
19 reference there to Mrs. Rorem's contention -- other than
20 part "C" -- but the reference is an odd one, in that it
21 seems to refer only to one subpart by description rather
22 than by letter. I'll give you the reference in a moment.

23 In referring to the subject of emergency planning,
24 the parenthetical is added after it, as follows:
25 "Evacuation of special facilities."

1 That parenthetical, of course, relates to the
2 subject of 1(b). What about the subject of 1(a)?

3 MR. GALLO: Judge Brenner, if I may, the intent
4 here was that the "except for evacuation of special
5 facilities," all other emergency planning issues would be
6 heard beginning October 1, with the -- the reason for that
7 is that we don't expect the FEMA advice on the state plan
8 until after October 1, and, for that reason, have included
9 it with the QA issue for hearing on January 20, 1986.

10 JUDGE BRENNER: In other words, you are saying
11 that 1(a) does not depend on a FEMA review?

12 MR. GALLO: Yes.

13 JUDGE BRENNER: What's the basis for that
14 belief?

15 MR. GALLO: Consultation with Staff counsel.

16 JUDGE BRENNER: Staff counsel? Since Mr. Gallo
17 has handed off to you.

18 MS. CHAN: To the best of our knowledge the
19 information that we need to litigate 1(a) will be
20 available October 1 and the information available to
21 discuss 1(b) will not be available until FEMA conducts its
22 exercise in November, regarding the evacuation of, I
23 believe it's the nursing homes. So we were planning to
24 litigate 1(a) in October, and 1(b) at the proposed January
25 20th hearing.

1 JUDGE BRENNER: All right. At the last report
2 we were informed, I think by both the Staff and
3 Commonwealth Edison, that state and local plans were
4 estimated to be ready for submission to FEMA in late July
5 or early August. We are now pretty much in late July.
6 What's the present status of that matter?

7 MS. CHAN: I believe one of Applicant's
8 officers has some information current as of last week.

9 MR. GALLO: It's my understanding, Judge
10 Brenner, that the state plans are to be sent to FEMA
11 during the first week of August.

12 JUDGE BRENNER: So you are still talking about
13 a future estimated schedule rather than something that has
14 occurred?

15 MR. GALLO: That's right. That's right. If
16 FEMA takes the estimated two months to read the document
17 and provide its views, that will carry one past October
18 1.

19 JUDGE BRENNER: I want to say, I want to think
20 about it, it's a surprise to me that nothing in
21 controversy in 1(a) depends on the review and approval of
22 off-site plans. Maybe I don't understand what is in
23 controversy in 1(a).

24 Mrs. Rorem, did you want to address that?

25 MRS. ROREM: Well, I was not quite aware of

1 that position either until I talked with Victor Copeland
2 several days ago, because I felt that some of it might
3 depend upon information contained in the plan. But, then,
4 I'm not familiar with what exactly will be in the plan or
5 in the standard operating procedures.

6 JUDGE BRENNER: Can you tell me a little bit as
7 to what you believe is in controversy in 1(a)? I'll read
8 it out loud. Do you still have a copy of your
9 contention?

10 MRS. ROREM: Yes.

11 JUDGE BRENNER: The introduction to the
12 contention reads: "Intervenor --" and that's Mrs. Rorem
13 and her co-Intervenors -- " -- contends that an adequate
14 emergency plan for Braidwood station should include the
15 following." And A reads "a program for informing the
16 public within 10 miles of the station of the means for
17 obtaining instructions for evacuation or other protective
18 measures in the event of a radiological emergency
19 originating at the station."

20 Do you mean the siren warnings? Do you mean that
21 plus something else? Do you mean something else and not
22 that?

23 MRS. ROREM: I mean quite a bit else. I mean
24 that -- well, Applicant and Staff are fairly familiar with
25 what I mean, which involves educating the public

1 beforehand about what procedure should be followed, why
2 they should be followed --

3 JUDGE BRENNER: Such things as -- I'm sorry, go
4 ahead.

5 MRS. ROREM: Such things as the emergency
6 planning brochure, other public information programs,
7 education in the school systems, whatever.

8 MR. GALLO: We view the issue as largely
9 raising the question of the adequacy of the pamphlet that
10 is being available to the populous and other individuals
11 that might be in the 10-mile EPZ. That document is
12 largely prepared by Commonwealth Edison. It is reviewed
13 by the state. It is my understanding that region 3
14 personnel, that based on their prior experience with
15 pamphlets at other Edison nuclear stations, that they
16 would be able to testify with respect to their position,
17 given the October 1 start date for hearings.

18 JUDGE BRENNER: But is it not correct that that
19 pamphlet, as you say, is approved by the state, and either
20 by reference or by some other means becomes part of the
21 approved state plan, eventually? In other words, even
22 accepting for the moment that your definition of the issue
23 is correct, doesn't that depend on the review of the
24 off-site plans for its preparation by the state or local
25 governments -- I guess largely by the state in the case of

1 the brochure -- and then some review by FEMA?

2 My other point is, as we looked at 1(a) we did not
3 deem it a prerequisite to the issuance of the low power
4 license. In other words, if you are putting it in the
5 FEMA category, that would be one consequence of putting it
6 in that category.

7 MR. GALLO: Judge Brenner, my view is simply
8 this. I don't view the FEMA advice as indispensable as
9 either 1(a) or 1(b) --

10 JUDGE BRENNER: You are preaching to the choir,
11 frankly, here. I don't view their recommendations as
12 necessary in any case, but --

13 MR. GALLO: I was thinking about the
14 recommendations this Board might use to base findings on.
15 With respect to the evacuation of special
16 responsibilities, the Staff will not have a position one
17 way or the other until they get the advice from FEMA,
18 therefore, that makes them indispensable. On the issue of
19 the pamphlet that doesn't maintain. The Staff has a
20 current position and it was that fact that drove me to
21 propose the schedule as you see it before you.

22 JUDGE BRENNER: As I say, I was -- I'm hearing
23 this for the first time with respect to 1(a), and I had a
24 different assumption. I must admit that our orders of a
25 month ago was a little elliptical, because it said "all

1 other." Emergency planning orders could be deferred.
2 What I had in mind was 1(c), but I didn't want to limit it
3 to that part and I am now glad I did not. I think the
4 parties should think about a schedule for 1(a), and maybe
5 we can come back to it this afternoon. I think there
6 might be disagreement about the scope of the issue, and,
7 of course discovery when it's conducted as it should be
8 could achieve a resolution of.

9 In addition, even if you are focused on a subject
10 such as the pamphlet, it might be that the normal course
11 is to await the review of state plans. My recollection is
12 FEMA does in fact look at the language of the pamphlet,
13 for what that's worth.

14 Beyond that, there are times in purchase planning
15 that when you are looking at issue A, say hypothetically a
16 pamphlet -- something involving some other aspect of the
17 off-site plan becomes important.

18 In other words, the reason that 300 more pages are
19 not in the pamphlet is because that type of thing is
20 sometimes covered in other matters and in order to show
21 that you might have to be at a later stage.

22 I'm talking off the top of my head now. I'll
23 retreat to my earlier statement that everybody think about
24 this and talk about it during lunch recess briefly, if you
25 can. Then we'll come back and consider it.

1 Staying, however, with the subject of Mrs. Rorem's
2 emergency planning contention, focusing now on the
3 remaining parts, 1(a), and 1(b), as I said to the extent
4 there's further information on 1(c) -- we have reviewed
5 that contention.

6 On the motion to compel, the Applicant filed a June
7 20, 1985 motion to compel based on a deposition, and more
8 recently a July 19, 1985 motion to compel based on written
9 interrogatories, which were asked quite some time before
10 that. I saw for the first time yesterday, because Judge
11 Callihan received it on Saturday, a handwritten answer
12 dated June 18th that must have been put just in the
13 regular mail rather than any expedited mail, from Mrs.
14 Rorem. Have the other parties received that?

15 MR. GALLO: Yes, your Honor.

16 MS. CHAN: Yes, your Honor.

17 JUDGE BRENNER: Of course it doesn't match up
18 very well with the subject of the motions. I mean it does
19 not reference a particular question previously asked and
20 did not -- I did not on my own feel capable of determining
21 the extent to which this rendered moot portions of the
22 motion to compel or not.

23 In passing, you did not timely answer the
24 Applicant's motion to compel based on the deposition, that
25 was filed back on June 20th. The time for responding to

1 motions, unless governed by a different rule, is 10 days
2 plus 5 days for mailing, if it was mailed by ordinary mail
3 and a shorter time, I believe three days, or maybe two
4 days -- I'd have to check that -- if it was by expedited
5 mail. You just cannot continue to participate in the
6 case, and if you'll forgive me, in such a lackadaisical
7 fashion. You are at risk, to the extent you have
8 something important that you want to put before us on the
9 merits of the case, you'll never get there if you do not
10 conduct your prehearing efforts with a little more
11 interest on your part.

12 The Board is quick to step in on its own, if we
13 perceive that a pro se intervenor is being dumped on, to
14 use the vernacular, in terms of burdensome requests. In
15 our mind that's not the case here. These are not large
16 discovery requests. The motions were not burdensome, and
17 your failure to respond is not excusable. I'll leave it
18 at that.

19 I might add, the Applicant waited too long to move
20 Mrs. Rorem's answers, based on the deposition, and I don't
21 know what was on the Applicant's mind. The deposition
22 took place on May 21st. The Applicant pursuant to 2740
23 (a)(7)(f), should have moved within seven days after the
24 deponent's failure to respond. That would have been well
25 before June 20th. So we've got a standoff, in terms of

1 the failure to comply with the rules.

2 We do encourage the parties to try to negotiate and
3 extend courtesies to each other on discovery dates and so
4 on. We recognize that has occurred, and we have no
5 quarrel with that. But in terms of making the first
6 motion to compel after initial failures within the given
7 time period, you still need to protect your rights to do
8 that.

9 All right, where are we in terms of these discovery
10 disputes, given Mrs. Rorem's handwritten response and
11 given the fact that at least Mrs. Rorem -- Mrs. Rorem you
12 better listen to this.

13 MRS. ROREM: Excuse me.

14 JUDGE BRENNER: -- and given the fact that at
15 least some of the remaining part of the contention would
16 not be litigated until January, based on the proposed
17 schedule?

18 MR. GALLO: Judge Brenner, the -- Mrs. Rorem's
19 June 18 response has been interpreted by me as a response
20 to our motion to compel, although it's not styled in that
21 fashion.

22 If she were to represent that the books and writings
23 that are referenced in her response is the response she
24 would have given upon deposition to a question asked that
25 might called for these books -- for this listing, I would

1 accept that representation and would consider the motion
2 to compel moot insofar as it relates to an identification
3 of articles and books that she referred to.

4 JUDGE BRENNER: That would be pages 82 to 84 of
5 the deposition?

6 MR. GALLO: Yes.

7 JUDGE BRENNER: Mrs. Rorem, is that all the
8 material that you would have referenced at that time? Or
9 is that all the material you would reference now? More to
10 the point.

11 MRS. ROREM: Yes.

12 JUDGE BRENNER: All right.

13 MR. GALLO: The remaining question is the
14 identification of the individual she talked to with
15 respect to emergency planning matters, and here I believe
16 her response misses the mark.

17 JUDGE BRENNER: Can I make a suggestion, only
18 for my own orientation. Can we come back to that one at
19 the end and turn to the written interrogatories that your
20 July 19th motion sought?

21 MR. GALLO: Yes. Well, in that instance we
22 have been granting Ms. Rorem extensions of time from --
23 within which to reply to those interrogatories. At the
24 deposition it became known to us that she had not received
25 a copy that we had sent to her and so we provided another

1 copy at that time. We established a mutually agreeable
2 deadline for the submission of answers. That deadline
3 came and passed without answers and then Mrs. Rorem went
4 overseas for a while so we were forbearing until she
5 returned. During the past week or so we really have been
6 unable to ascertain from Mrs. Rorem just when she might
7 file those answers. We've run out of patience and we
8 filed the motion to compel as a result.

9 JUDGE BRENNER: One of them is number 21. I'm
10 looking at the copy of the original set.

11 Ms. Rorem, do you have a copy of the Applicant's
12 motion to compel and written interrogatories?

13 MRS. ROREM: No, I do not, because I believe it
14 came in the mail Saturday by express mail, and I received
15 a notice of it, but by the time I got back to the post
16 office it was closed. My husband went to get the mail
17 yesterday. Didn't get it.

18 JUDGE BRENNER: All right. You have answered
19 my question. You didn't get it. So you have never even
20 read it.

21 MRS. ROREM: I haven't seen it yet.

22 JUDGE BRENNER: You have, however, seen their
23 interrogatories to you, set two?

24 MRS. ROREM: Yes.

25 JUDGE BRENNER: Do you have a copy of that?

1 MRS. ROREM: Not with me; no. I do have a
2 copy.

3 JUDGE BRENNER: Mr. Cassel, can you help us
4 out?

5 MR. CASSEL: When were those filed?

6 MR. MILLER: I have an extra set.

7 MR. GALLO: July 19th.

8 MR. MILLER: It's the attachment to that.

9 JUDGE BRENNER: These are interrogatories
10 originally dated April 25, 1985, and the subject of the
11 July 19th motion to compel. I suggest that question 21 is
12 moot at this point; given the withdrawal of that word from
13 the contention; is that correct?

14 MR. GALLO: I would agree with that.

15 JUDGE BRENNER: So you did not mean to compel
16 answer to that one?

17 MR. GALLO: In the circumstances at this time;
18 no. The set two interrogatories were filed prior to the
19 deposition, which established that, and I must confess we
20 did not screen these interrogatories when we filed the
21 motion to compel, to look for that sort of thing.

22 JUDGE BRENNER: Mrs. Rorem, Applicant's
23 complaint, which appears valid to us, is that they have
24 asked what are now four questions. They are not
25 burdensome in number or scope. They have asked them quite

1 some time ago, months ago. You initially say you did not
2 receive them and then they gave you another set, also
3 quite some time ago.

4 MRS. ROREM: Yes.

5 JUDGE BRENNER: And they are follow-ups to your
6 original answer so they are quite specific. Why haven't
7 you answered them?

8 MRS. ROREM: I have not answered them because I
9 have waiting for information from people from whom I
10 sought information on emergency planning brochures and the
11 -- and their responses as to what specifically should and
12 should not be included in emergency planning brochures. I
13 was gone for a large portion of the time since then. I
14 have not received those answers.

15 Additionally, as I had told Mr. Gallo quite some
16 time ago, the entire issue of emergency planning and the
17 specificity of the contentions relies so heavily upon the
18 plan and the standard operating procedures that it's
19 difficult to -- I guess I feel as though I'm being pinned
20 down on items that cannot really be adequately answered at
21 this time. And from the beginning when I filed this
22 contention I intended that when the plan was made
23 available I could then more specifically see the ways in
24 which I did not feel that the plan as proposed met the
25 criteria that it had to.

1 I felt that all of this was somewhat burdensome
2 because it is somewhat irrelevant. Any of this may mean
3 nothing after the plan actually comes out and I do not
4 quite understand why, procedurally, all of this is done
5 when so much of it depends so heavily upon the plan.

6 JUDGE BRENNER: Well, I'm not going to pretend
7 to capture the entire rationale behind discovery as it has
8 been used in courts for many, many years now. I'll take a
9 stab at a simple overview for you.

10 The purpose of discovery is for one party to learn
11 what another party has in mind as of the time the
12 discovery is asked. We set discovery schedules to have
13 that information transferred. It's a two-way street. The
14 parties are entitled to information of each other.

15 MRS. ROREM: I understand that.

16 JUDGE BRENNER: That does not mean that later
17 on discovery does not have to be supplemented as further
18 information is learned.

19 Applying that balance to the matter at hand, I'm
20 going to have to disagree with you quite strongly in terms
21 of your characterization of these written interrogatories
22 as burdensome or irrelevant. In fact they are quite
23 narrow, quite specific, quite to the point in terms of
24 being material to the issue and the contention. And, as I
25 said earlier, they are follow-ups, trying to understand

1 better what you meant by certain references to your
2 previous answers. And it's about as legitimate a
3 discovery request as any could be.

4 MR. CASSEL: Judge, could I have just a moment
5 with Mrs. Rorem?

6 JUDGE BRENNER: We are going to order the
7 answers. It's that simple.

8 MR. CASSEL: What I'm about to say is not at
9 all inconsistent with that.

10 JUDGE BRENNER: Let me add one point and then I
11 will give you an opportunity, Mr. Cassel.

12 Moreover, to some extent already I perceive that the
13 failure to have these answers has inhibited the Board's
14 work because we would have been able to discuss more
15 intelligently what contention 1(a) meant and encompassed
16 and understand better where it might be scheduled, had you
17 answered these questions, some of which relate to 1(a).

18 JUDGE BRENNER: Mr. Cassel, while you are
19 consulting with Mrs. Rorem, the bottom line is we want to
20 set an expeditious date for the answer.

21 MR. CASSEL: I understand.

22 JUDGE BRENNER: You make a date with her and
23 make sure it's expeditious.

24 (Discussion off the record.)

25 JUDGE BRENNER: Mr. Cassel, would you prefer we

1 allow you the lunch recess to discuss it with Mrs. Rorem
2 and come back to it. We can accommodate you.

3 MR. CASSEL: Whatever accommodates your
4 schedule.

5 JUDGE BRENNER: I was hoping to use your good
6 offices to discuss the motions to compel, that concerns
7 questions at the deposition. I believe your law firm was
8 present there; Mr. Wright, I believe.

9 MR. CASSEL: Maybe we better do it over lunch,
10 then.

11 JUDGE BRENNER: Why don't you see what you work
12 out with Mrs. Rorem first; and make sure you pick a time,
13 sometime before we come back on the record, to get
14 together with all the parties and at the time you discuss
15 those remaining motions to compel you can discuss the
16 possible scheduling of the litigation of contention 1(a)
17 also.

18 The motion to compel the written interrogatories is
19 granted. The only question is getting the expeditious
20 day, and rather than setting one arbitrarily, I'll allow
21 to you suggest one and then I'll see if we can agree to
22 it.

23 On the other one; that is, it was a motion to compel
24 the identification of persons with whom Mrs. Rorem has
25 consulted, I understand her objection. They are not

1 witnesses yet. She's still talking with them. Our belief
2 that she has a witness privilege, as it is characterized,
3 is of course not fully accurate but not necessarily wholly
4 inaccurate either, depending on the circumstances.
5 Further identification is wrapped up with the question of
6 schedule for 1(a), and that's why I want to come back to
7 all of them together.

8 I would like to now take up the subject -- and give
9 Mr. Bock a chance here -- of the Commonwealth Edison
10 motion for summary disposition of Neiner Farms contention
11 1, which relates to the alleged impacts of operation of
12 the alleged 765 kV transmission line.

13 The motion was filed by Commonwealth Edison pursuant
14 to the schedule, in advance of the schedule, in fact, on
15 June 11, 1985, and Mr. Bock, on behalf of his client,
16 Neiner Farms, answered on July 10, which were received on
17 July 11; and Staff answered on July 11, which was received
18 on July 12th.

19 We had asked the parties to consider the possibility
20 of a condition relating to this matter in the operating
21 licenses, should any ever issue, for the Braidwood station
22 if we were to grant summary disposition. There are a lot
23 of conditions in there, but we wanted to look ahead and we
24 discussed that briefly during a telephone conference call
25 this past Friday, for which no record was kept. It was

1 simply an inquiry as to what the Board had in mind and we
2 hope we answered that satisfactorily. I don't know which
3 party wants to address the matter first.

4 Mr. Bock, did you want to?

5 MR. BOCK: I have drafted some conditions in
6 response to that phone call, which I would share with the
7 Board. Mr. Gallo has a copy. Ms. Chan does not.

8 JUDGE BRENNER: I don't know how much time the
9 parties have had with this. Did anybody else have a
10 proposed condition?

11 MR. GALLO: Judge Brenner, I have penned a
12 different type for consideration. I apologize for mine
13 not being as elegant as Mr. Bock's. I have one copy for
14 each the Board members, Mr. Bock and counsel as well.

15 JUDGE BRENNER: All right. Let's bind
16 Mr. Bock's proposal into the transcript at this point.

17 (Document follows:)

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSIONBEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of:

COMMONWEALTH EDISON COMPANY

(Braidwood Nuclear Power
Station, Units 1 and 2)Docket Nos. 50-456
50-457INTERVENORS PROPOSED LICENSING CONDITIONS
IN REGARD TO CONTENTION # 1

1. A 765 kV transmission line associated directly with, or having any relationship to, Braidwood Units 1 or 2 will not be constructed on the Braidwood to Wilton Center Transmission Substation right of way.

2. No power generated ^{by} or passed through Braidwood 1 or 2 will be transmitted through any 765 kV transmission line.

3. A 765 kV transmission line on the Braidwood to Wilton Center Transmission Substation right of way either related to additional capacity at Braidwood or for other reasons will not be constructed for a period of 25 years.

1 JUDGE BRENNER: He'll read in Mr. Gallo's
2 proposal on behalf of Commonwealth Edison: "The
3 electricity generated by Braidwood Nuclear Power Station
4 units 1 and 2, will be transmitted from the station over
5 345 kV transmission lines. No such electricity will be
6 transmitted from units 1 and 2 by 765 kV transmission
7 lines."

8 I suppose you are in partial agreement, as I match
9 them up, except Mr. Bock has more.

10 Mr. Bock, what about your position on summary
11 disposition? If proper conditions were adopted would you
12 withdraw your opposition? Where does that stand?

13 MR. BOCK: I think our position is that the
14 Applicant's motion for summary disposition is largely
15 based on the Getty affidavit that's attached to that
16 motion and much of the language in the proposed licensing
17 conditions which we have before us is taken directly from
18 that affidavit. We feel that unless Applicant is willing
19 to agree to these types of licensing conditions, that the
20 motion should not be granted; that if they will agree with
21 these conditions, that very arguably there is no present
22 material issue of fact to be tried.

23 Our conditions are somewhat broader than the one
24 just submitted to you by the Applicant, but I think in my
25 response brief we were concerned about a direct or

1 indirect connection of the 765 line with the Braidwood
2 plant. In other words, it would be there partly as a
3 result of the location of the Braidwood plant, and we
4 strongly believe that's enough of a nexus for that to be a
5 matter properly before the Board.

6 JUDGE BRENNER: Even if it would only be there
7 partially in connection -- using "connection" in the
8 relationship sense -- because a further generating unit
9 would be constructed, either at Braidwood or some other
10 site on the system? Even so, you think such a line should
11 be before this Board at this time?

12 MR. BOCK: Well, I think, you know, Mr. Getty
13 addressed that to some extent in his affidavit. We would
14 be concerned about additional generating capacity there;
15 but also at other locations that would ultimately flow
16 through that line and be in some way connected with the
17 Braidwood operation -- except for Braidwood it would not
18 go through that particular corridor. I think that's one
19 of our concerns.

20 JUDGE BRENNER: Did the Staff have any proposed
21 conditions?

22 MS. CHAN: The Staff has reviewed the condition
23 proposed by the Applicant and it agrees with the Staff's
24 view of its scope of environmental review and the status
25 of the 765 line in relationship to the operating license

1 application presently before it.

2 The language proposed by the Applicant is agreeable
3 to the Staff.

4 JUDGE BRENNER: It strikes me, Mr. Gallo, I'm
5 reading your proposal for the first time -- as you know
6 this is kind of a flexible give and take here among the
7 Board and the parties to help us all better understand the
8 different positions -- it strikes me that the second
9 sentence of your condition is broader than the motion for
10 summary disposition as supported by the Getty affidavit.
11 The second sentence for the record again reads, "No such
12 electricity will be transmitted from units 1 and 2 by 765
13 kV transmission lines. I don't know if the word "such"
14 adds anything and I put no special meaning to that. The
15 meaning is no electricity will be transmitted from units 1
16 and 2 by 765 kV transmission lines; is that right?

17 MR. GALLO: I believe that's essentially
18 correct; yes. I don't believe it's broader, Judge
19 Brenner. The purpose of these two sentences that we have
20 submitted today is to articulate our understanding of the
21 Nuclear Regulatory Commission's jurisdiction over this
22 matter. The NRC at this time has jurisdiction with
23 respect to power generated by the Braidwood Nuclear Power
24 Station. The Getty affidavit has stated flatly that it's
25 not intended to transmit electricity from units 1 and 2,

1 using 765 kV transmission lines, and the two sentences
2 offered today are intended to memorialize that
3 commitment. But --

4 JUDGE BRENNER: I'm sorry; had you finished?

5 MR. GALLO: I should also point out that the
6 language is phrased as license condition language; and it
7 is based on an assumption that should conditions change in
8 the future that Commonwealth Edison, as the licensee,
9 would not be barred from submitting a request for
10 application before the agency to change this license
11 condition in some respect, should it deem it appropriate
12 to do so.

13 JUDGE BRENNER: Mr. Bock's -- one of Mr. Bock's
14 concerns is that the Getty affidavit does not say what
15 your second sentence says, because the Getty affidavit --
16 referring to Mr. Getty, it's Commonwealth's position as
17 related by Mr. Getty -- states that in the future -- which
18 he doesn't believe would be for at least 25 years, based
19 on his present sources of information and prognostications
20 and so on -- but he thinks that it does not preclude the
21 possibility, in fact he alludes to the possibility that
22 there could be future units on the system, perhaps even at
23 Braidwood, that would make advantageous the use at that
24 time of 765 kV lines.

25 Now, if you had such lines or line to the Braidwood

1 site, how could you say, as you do in this sentence here,
2 "No electricity will be transmitted from units 1 and 2 by
3 765 transmission lines." Do you have fungible
4 electricity?

5 MR. GALLO: If we hypothesize units 3 and 4
6 would be nuclear units and located at the Braidwood site
7 --

8 JUDGE BRENNER: What if they are coal units,
9 anyway?

10 MR. GALLO: Let's hypothesize coal units. If
11 765 lines were installed at that time it is likely that
12 Commonwealth Edison might want to use those sales lines to
13 wheel the power from Braidwood units 1 and 2. If and when
14 that became a reality, this license provision, if made a
15 license provision, would have to be modified.

16 JUDGE BRENNER: It's not much of a condition
17 then, is it?

18 MR. GALLO: All license conditions are subject
19 to change, as I understand it. They are not embodied in
20 perpetuity.

21 JUDGE BRENNER: But the premise of our question
22 was whether or not there could be a license condition
23 which would ensure the future accuracy of the present
24 statement of facts, as to which there is no genuine issue
25 filed by Commonwealth Edison in support of the motion for

1 summary disposition.

2 MR. GALLO: If the Board is seeking a license
3 condition that would bar for all time the transmission of
4 electricity -- I should rephrase.

5 If the Board is suggesting a license condition that
6 would bar for all time the transmission of electricity
7 from Braidwood 1 and 2 over 765 kV transmission lines,
8 then we would not be amenable to that type of condition.

9 JUDGE BRENNER: That wasn't our thought. That
10 was the thought that I run into in the last sentence of
11 your own condition. That's how we got where we are.

12 MR. GALLO: As I said earlier, I mean if it
13 would clarify things, we could insert, "at this time, no
14 electricity --" or some such amendment along those lines.
15 I, frankly, don't think it's necessary to qualify the
16 second sentence because, by operation of law, licensee can
17 always apply for an amendment. They may not get the
18 amendment. But they could always apply for it.

19 JUDGE BRENNER: Let me suggest some other
20 possibilities -- Ms. Chan, did you want to say something?

21 MS. CHAN: Yes. I wanted to mention that the
22 Staff doesn't really feel that a license condition of this
23 sort is appropriate and the Staff had entertained the
24 possibility of drafting a license condition for the
25 Board's benefit. I would like to make it quite clear that

1 the Staff is not in favor of a license condition dealing
2 with a future possibility of something not associated with
3 Braidwood 1 and 2. It is not currently before the
4 Commission, as part of the OL application.

5 JUDGE BRENNER: I'm afraid you didn't follow
6 the wording of our order very closely. I'm a little
7 disappointed. We provide possible wording for a possible
8 condition in the event the Board decides to provide one --
9 not with establishing your position on the first part on
10 question 1.

11 MS. CHAN: I felt obligated to voice the
12 Staff's opinion on the condition. Thank you.

13 JUDGE BRENNER: We would have been helped
14 better by proposed language but you're saying you don't
15 think we should do it, anyway.

16 Let me tell you some other possibilities which we
17 would not totally bar the possible transmission in the
18 future of electricity over 765 kV lines from Braidwood 1
19 and 2, but would, nevertheless, assure the future
20 accuracy, subject to no change unless hearing rights and
21 notice and so on would be given to Neiner Farms, and would
22 still assure, as we started to say, the continued accuracy
23 of the statement as to which there is no genuine, material
24 fact.

25 These aren't in condition language form. I'm just

1 giving you the thoughts and we are capable of drafting one
2 on our own if we have to, if we decide we want to.

3 But an important part of the Getty affidavit and the
4 Applicant's statement of material facts is that the only
5 way a 765 line would be constructed is if another
6 generating unit would be built. That in itself, arguably,
7 under some of the case law involving segmentation of
8 different projects or separation of different projects for
9 purposes of environmental review under the National
10 Environmental Policy Act might be sufficient for us to
11 grant summary disposition on that basis. That is not
12 present in your proposed condition, Mr. Gallo. That is
13 why I suggested that the second line of your condition is
14 arguably broader than what I just mentioned.

15 In addition, the fact that the present forecast is
16 that a further generating unit would not be brought on
17 line or to completion of construction -- I forget the
18 point referenced -- but in any event would not come into
19 being for approximately 25 years, based on the present
20 outlook, could also be referenced in the condition without
21 necessarily tying the number 25 years down. That is, some
22 indication that it is going to be many years; it can even
23 be written that way: It will be many years before other
24 generating plant will be put on the Commonwealth system.
25 The present estimate is that it would not be for 25

1 years. And then there's still only the possibility that
2 there would be a 765 line needed in conjunction with that
3 further generating unit.

4 But more to the point the way I phrased it, the
5 first, at the outset no 765 line would be constructed on
6 Commonwealth's system unless it was done in conjunction
7 with the addition of units beyond the Braidwood units in
8 the Commonwealth system.

9 Mr. Bock, as I understand part of your opposition,
10 you are saying even if that's the case, because Braidwood
11 1 and 2 were constructed and put into operation previously
12 -- if that should occur -- that affects the future design
13 of the entire transmission system and the fact that a 765
14 kV line would be added later in conjunction with another
15 generating unit; is that right?

16 MR. BOCK: That's one concern. And I think
17 just the placement of Braidwood 1 and 2, and the
18 possibility that some of the electricity may come up of
19 other units that would go in that particular direction
20 because of the location of Braidwood 1 and 2.

21 JUDGE BRENNER: In your answer you did not
22 supply much in legal terms of the analysis of case law
23 precedent in terms of separation of different parts of
24 reviews for purposes of environmental review. Are you
25 aware that there is a lot of that case law around?

1 MR. BOCK: I'm aware that there is some.

2 JUDGE BRENNER: There's a lot.

3 MR. BOCK: A number of the cases I cited
4 certainly addressed the connection issue that I thought we
5 were arguing.

6 JUDGE BRENNER: There's a case -- not the most
7 recent, but it's a case that is continually cited, known
8 as Swain versus Breniger, I don't believe the Applicant
9 cited that -- Swain, Breniger, it's a 7th circuit, 1976
10 case. I don't have the first page reference for the case
11 but the pertinent portion is at 542(f) 2nd, 3364 to 69.

12 Among other things it discusses, as the
13 considerations to be applied to whatever factual
14 circumstance the court had before it in determining
15 whether another segment, either in a different location or
16 further in time or both, would be encompassed with the
17 environmental review of the other segment, are the
18 following:

19 Whether or not the initial proposal has independent
20 utility, without -- "utility" with a small "u" -- whether
21 or not alternatives for future proposals are foreclosed by
22 present permission being sought; whether or not the future
23 proposal is sufficiently definite that it is highly
24 probable that it will be carried out in the near future;
25 and I suggest your response -- although it's a little

1 unfair since you haven't read the case -- but taking my
2 summary of the case is accurate, and subject to my own
3 check that it's accurate, I suggest to you that the case
4 law is against you on your position provided a condition
5 were to be adopted embodying better language of the
6 thoughts that I suggested just before.

7 Did you want to respond to my suggestion at this
8 time?

9 MR. BOCK: I think to some extent that's why we
10 drafted the conditions as we did, recognizing that if
11 those conditions were attached to guarantee the integrity
12 of these estimates made by the Applicant, that likely
13 there would be no material issue of fact.

14 JUDGE BRENNER: However, I think your condition
15 goes beyond what is required under the case law and beyond
16 what the Applicant has said in the motion for summary
17 disposition with respect to their situation.

18 MR. BOCK: Is that in respect to number 3 that
19 I have listed?

20 JUDGE BRENNER: No. In fact, I was thinking of
21 number 2; oddly enough the same quarrel I had with the
22 Applicant's number 2. But you see their item they view as
23 cast in sand rather than concrete. We don't accept that
24 We don't accept that as applied to the situation.

25 Let me say Mr. Gallo's summary of the general law as

1 to license conditions is accurate but not necessarily so
2 when applied to a condition that the Board is proposing as
3 a prerequisite in admitting or denying a question, given
4 that a party is to be given reference to a later change
5 with notice rights and hearing rights and also a possible
6 condition if a window needs to be left for any reason.

7 I also think one is broader, in that there may be
8 some relationship with Braidwood 1 and 2, but only after
9 another generating unit would be planned. There's no
10 doubt in my mind that what you say is true. Previous
11 units on a generating system, including Braidwood 1 and 2,
12 affect the choices of timing and location and type of
13 future lines. But that is the nature of any electrical
14 transmission system, or, for that matter, projects of
15 other types. Many of the cases on this type of issue
16 actually deal with highways. But the analogy is
17 applicable, nevertheless -- or mostly applicable.

18 MR. BOCK: Well, I guess the concern there was
19 whether or not that line would be completely separate and
20 apart and have its own purpose not related to Braidwood?

21 JUDGE BRENNER: I know that's what you want.
22 I'm suggesting it's more than you are entitled to under
23 the case law. But you are entitled to assurance that they
24 cannot come in next year or in two years and say: Oh, we
25 made a mistake, we really needed the line for Braidwood 1

1 and 2. We do not have to wait for further generating
2 units. That would mean that it really was connected to
3 Braidwood 1 and 2 and not having independent utility in
4 connection with the future -- with a future generating
5 plant.

6 Mr. Bock, am I correct that if transmission lines
7 are constructed that they are not related to nuclear units
8 in the procedure, there are state proceedings to which you
9 have access?

10 MR. BOCK: That's correct.

11 JUDGE BRENNER: Both with respect to property
12 related matters, easements and condemnations, and with
13 respect to operational impacts?

14 MR. BOCK: That's correct.

15 JUDGE BRENNER: Mr. Gallo, as I recall from my
16 notes based on the motion for summary disposition, or
17 perhaps this is something I gleaned from the environmental
18 report, I'm not sure, you only need a right-of-way of
19 approximately 145 feet for the for the double 345 kV lines
20 but you need an additional 170 feet for -- if a 765 kV
21 line were to be put in the same right-of-way; is that
22 correct?

23 MR. GALLO: Subject to check on the numbers,
24 but that's basically right. The right of way needed for
25 the 345 kV lines is much less than what you need for the

1 765. The total right of way includes both, that was
2 initially suggested.

3 JUDGE BRENNER: Have you cleared the
4 right-of-way to the width needed only for the 345 kV line
5 or have you cleared it to the width necessary for the 765
6 kV line over those areas for which you have acquired the
7 easements necessary for the full width?

8 MR. GALLO: My understanding, Judge Brenner,
9 because the land in question is farmland, that there
10 really is no clearing that has been done because none was
11 required.

12 As far as I understand it now, farming is still
13 allowed in those areas, so the VEPCO case involving North
14 Anna where the Board imposed a condition limiting clearing
15 to just the 345 for the transmission line area that was
16 involved with the nuclear area really doesn't have much
17 moment in this case because of the difference in the
18 nature of the real estate involved.

19 JUDGE BRENNER: That was a construction permit
20 case, in any event, wasn't it?

21 MR. GALLO: Yes. But it dealt with forest
22 land.

23 JUDGE BRENNER: Mr. Bock, do you agree or
24 disagree with what Mr. Gallo said in terms of clearing?

25 MR. BOCK: I'm not presently appraised whether

1 or not any clearing has been done. I could find out
2 pretty shortly but not at this point.

3 JUDGE BRENNER: You are mostly interested in
4 your clients, Neiner Farms, and as to Neiner Farms the
5 Commonwealth does not have permission for the right-of-way
6 --

7 MR. BOCK: For a 765 line.

8 JUDGE BRENNER: All right. Well, if we hear
9 nothing further from the parties on this matter we can do
10 some thinking on our own with respect to the ruling. I
11 think it would help us and the parties, however, if you
12 could get together again and get back to us, since you are
13 all here. Certainly I'm not going to require that you get
14 back to us this afternoon but to the extent you can, it
15 might be helpful. At least some further word.

16 MR. BOCK: I have an inquiry, Judge Brenner, as
17 we might enter into those discussions. You made the
18 suggestion that perhaps one part of that condition might
19 be something relating to many years with a present
20 estimate of 25. Would the Board consider at least some
21 minimum number of years? Some specific number?

22 JUDGE BRENNER: My point of reference of course
23 is the case law and what is required when I'm ruling in a
24 matter in -- when we are ruling in a matter in which there
25 is a disagreement. We have to go back to the case law and

1 see whether my notes, based on talking about many years in
2 the future, is inaccurate in reference to the case law and
3 whether there is some indication of whether that was part
4 of the holding or just an observation as to the factual
5 situation before the Court in those cases. So I'd have to
6 -- I'd want to think about it and look.

7 Having said that, it might be of some interest to
8 know the certainty with which Applicant believes its
9 25-year estimate is accurate, just to learn their
10 willingness to agree and therefore remove it from
11 controversy on some minimum which would make you happy but
12 still be sufficiently short of the 25 years so that they'd
13 have confidence in it. You know, if they were afraid to
14 agree to three years I'd be worried about that 25-year
15 estimate, for example, unless they had sound reasons.

16 So, that reinforces my point that the lines and
17 initiative of the parties in the first instance is to be
18 preferred to a ruling. But we'd be prepared to make a
19 ruling, not necessarily today on the matter, if the
20 parties can give us no further assistance. But we would
21 welcome further assistance.

22 MR. BOCK: We'd certainly be glad to cooperate
23 to try to come up with something.

24 JUDGE BRENNER: We'll be glad to give you more
25 time for lunch break, given all these matters we have

1 asked you to attend to.

2 JUDGE COLE: That might give you time to eat
3 lunch, also.

4 JUDGE BRENNER: Let's take up what I think will
5 be a brief matter; that is, Neiner contention 4(a) and
6 (b), that is related to the railroad explosion.

7 In the first instance we want to approve the
8 modified wording agreed to by the parties and filed by the
9 Staff on July 11th. We thank the parties for getting
10 together. It was our observation on our own that the
11 contention as phrased really did not set forth what was
12 now truly in controversy and the parties agreed and, as
13 reworded, the contention does reflect what we thought was
14 in controversy very precisely. That wording is, of
15 course, in the file of this case through the July 11th
16 Staff filing. If anyone would deem it helpful to them we
17 could have it bound into the transcript, if somebody has
18 an extra copy?

19 MS. CHAN: I'm sure I have a copy your Honor,
20 to the reporter.

21 (Discussion off the record.)

22 (Document follows:)

23

24

25

MODIFIED NEINER CONTENTION 4(a) AND (b)

4. Intervenors contend that the proximity of the Illinois Central Railroad line to the Braidwood Station site and the use of that rail line to transport munitions from the Joilet Army Ammunition Plant, including the potential transport of RDX and HMX explosives which may be manufactured at that facility in the future, create an unacceptably hazardous condition. The condition is hazardous in the following respects:

a. The probability of an accident involving an explosion of munitions on the rail line is not so low as to preclude its consideration as a design basis accident; and

b. The design of the Braidwood Station is such that the facility could not withstand the occurrence of an explosion of munitions on the rail line without endangering the public health and safety.

Respectfully submitted,

Elaine I. Chan

Elaine I. Chan
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 11th day of July, 1985

1 JUDGE BRENNER: Does anybody have anything else
2 they want to say about that contention? Nobody wants to
3 tell us about the possible settlement status?

4 MR. GALLO: I would address that, Judge
5 Brenner. As far as I can determine we have not been able
6 to settle the issue. Discussion was held on the basis --
7 for settlement but we were unable to reach agreement on
8 that and I consider the settlement discussions over.

9 JUDGE BRENNER: Over?

10 MR. GALLO: Yes.

11 JUDGE BRENNER: See, I like to hear the word
12 "open," not "over."

13 MR. BOCK: Perhaps based on some later
14 discussion with the individuals I represent, I would
15 consider them still open. I'm sure Mr. Gallo's impression
16 earlier was not incorrect, but I would like to proffer at
17 least an opportunity to perhaps settle that issue.

18 JUDGE BRENNER: There appears to be even some
19 fundamental difference of opinion as to whether these
20 explosives -- I don't know what size shells you wish to be
21 shipped -- smaller artillery shells -- are even shipped by
22 railroad. I would like that resolved among two
23 intelligent parties -- three intelligent parties well
24 represented by counsel that we have here without getting
25 to the day of the evidentiary hearing and finding out that

1 there cannot be even a meeting of the minds on that.

2 I recognize what the situation is today presents
3 some problems as to what the situation might be in the
4 future, but you ought to at least be able to get together
5 and report on that to the Board in a manner other than a
6 Staff employee relating a telephone conversation, second-
7 or third-hand.

8 We appreciate that the parties feel the obligation
9 under the McGuire case to keep us informed, so I mean that
10 as no criticism of the Staff's filing whatsoever; but
11 obviously we recognize that only serves that purpose and
12 not the more important purpose of definitively finding out
13 what the situation is and will be.

14 MR. GALLO: Judge Brenner, if I could address
15 your point just briefly? I have sought, unsuccessfully,
16 to get the concrete information from the Army on the
17 status of the Joliet arsenal, both in terms of the
18 shipment of flake TNT and in their future plans with
19 respect to RDX/HMX explosives.

20 I have not met with much success in getting any kind
21 of cooperation. They are willing to talk with me but not
22 on the record.

23 With respect to the information developed by the NRC
24 Staff, it is true we have been told that at the present
25 time no shipments of ammunition or explosives is made by

1 rail from Joliet arsenal but that doesn't speak for
2 war-time conditions. There is no guarantee at this time
3 that if there were another Vietnam or other type of
4 war-time condition, they might not ship by rail. That's
5 the present state of my knowledge.

6 We are attempting to obtain more concrete and better
7 information on the issue, and it may be we may have to
8 seek the assistance of the Board in that respect.

9 JUDGE BRENNER: I don't think the Army wants to
10 hear from me again.

11 What did they make there? What were they, artillery
12 shells?

13 MR. GALLO: It's basically something called
14 flake TNT, which is a --

15 JUDGE BRENNER: It's a propellant.

16 MR. GALLO: It's an explosive which I guess is
17 included in artillery shells or do they just ship it in
18 that form? Yes, it's, I'm told it's --

19 JUDGE BRENNER: I know what it is.

20 MR. GALLO: It's a propellant form; it's an
21 explosive in a form that has to be inserted elsewhere.

22 JUDGE BRENNER: They don't actually make the
23 shells there?

24 MR. GALLO: That's right. They just make the
25 raw material for the explosive and ship that elsewhere in

1 the system.

2 JUDGE BRENNER: I guess, Mr. Bock, that's why
3 the contention always referred to transport from the
4 Joliet ammunition plant, rather than to it. I always
5 wondered, don't they have explosives being shipped to it
6 under your scenario?

7 MR. BOCK: Apparently not. Apparently there's
8 a substantial stockpile and they are not coming in. They
9 are only going out.

10 MR. GALLO: They presently have a flake TNT
11 plant there that produces the explosive.

12 JUDGE BRENNER: All right. That answers my
13 question as to the extent of the hazard, too. There's an
14 arguably different hazard of shipping flake TNT than there
15 is shipping 81 millimeter manufactured shells, for
16 example.

17 MR. GALLO: When the issue was evaluated at the
18 construction permit stage, flake TNT was selected as the
19 limiting explosive among all the explosives that might be
20 shipped from the Joliet arsenal.

21 JUDGE BRENNER: This is a contention, I take
22 it, about which there is no disagreement on our schedule.
23 This is one that the litigation would begin on or about
24 October 1st. I say -- the reason I say "on or about" is
25 because of possible minor adjustments with courtroom

1 schedules and Board schedules but we are not talking about
2 big adjustments here; correct? All right. It's set for
3 trial at that time. We'll get to the schedule at the
4 end.

5 No motions -- no dispositive motions were filed on
6 this contention. Is there anything else pending on this
7 contention that I don't know about?

8 MR. GALLO: Nothing I'm aware of, Judge
9 Brenner, with the exception -- the reservation that I
10 alluded to earlier that we may have to seek the assistance
11 of the Board 'n getting concrete information from the
12 Army.

13 JUDGE BRENNER: Talk to the Staff first.
14 That's another branch of government. Maybe they can help
15 you.

16 MS. CHAN: We haven't had much success in that
17 realm either.

18 JUDGE BRENNER: Well, settlement negotiations
19 are not over, contrary to your belief, Mr. Gallo. Okay?

20 MR. GALLO: They have now reopened, your
21 Honor.

22 JUDGE BRENNER: Even if it's not settlement, at
23 least a better understanding by all of you what the
24 situation is. This sounds like an ideal case for you all
25 to conduct joint discovery and then share the knowledge.

1 See if you can help each other out, and by doing that, I
2 think you'll help your own clients out also. Otherwise, I
3 will see you at trial. But please don't come in with your
4 testimony and have a disagreement as to the nature of what
5 might be shipped and so on. I understand if you don't
6 have better information you might have to make certain
7 postulation based on possibilities, but it would be nice
8 if that could be avoided.

9 Let me ask one other question about the contention.
10 Do the Applicant and Staff know yet, assuming this
11 contention goes to trial as it is phrased, whether the
12 case will be solely on the consequences of a postulated
13 explosion or whether you would also depend on
14 probability?

15 MR. GALLO: I can address that, Judge Brenner.
16 As the contention is worded, a response to the contention
17 would involve two elements. The first element would
18 involve demonstrating that the plant was constructed
19 sufficient to withstand the energy and the forces
20 generated by the Staff design basis accident in this
21 respect, which is the explosion of one box car full of
22 munitions.

23 JUDGE BRENNER: Designed. Not constructed.

24 MR. GALLO: Designed. Right. So, there we
25 would show that the plant had been adequately designed to

1 withstand those forces.

2 Probabilities would be used to rule out the need to
3 design for the forces generated by the explosion of more
4 than one box car of explosives.

5 JUDGE BRENNER: Thank you. Staff, do you know
6 what your posture would be?

7 MS. CHAN: Applicant's counsel and I have
8 discussed it and that was the basis of the framing of this
9 reworded contention.

10 JUDGE BRENNER: Is the Staff going to agree
11 that the plant can withstand the explosion of one box car
12 of the types of explosives referred to in the contention?

13 MS. CHAN: Yes. As we understand that was the
14 analysis performed in the CP stage.

15 JUDGE BRENNER: I just thought I'd help your
16 discovery along here, Mr. Bock.

17 MR. GALLO: Along those lines, Judge Brenner,
18 if I may, the reference in the contention to RDX/HMX
19 explosives would be addressed by an expert witness who
20 would explain why, at this time, given the status within
21 the Army of whether or not they are going to site a
22 facility to produce that explosive at Joliet and the lack
23 of any other concrete information that we are not able to
24 deal with that particular matter. We would, in evidence,
25 propose, perhaps, a license condition which, if it came to

1 pass that the Army located a munitions center involving
2 RDX/MHX at Joliet that the Applicant or licensee at that
3 time would notify the Staff and a proper evaluation if
4 needed would be made at that time.

5 JUDGE BRENNER: Do I infer correctly from that
6 that you agree that RDX and HMX has a greater explosive
7 force value than equivalent flake TNT?

8 MR. GALLO: It's my understanding that the
9 force is not necessarily greater but it's more volatile
10 than flake TNT, and therefore the opportunities for
11 explosion is greater.

12 JUDGE COLE: That would just deal, then, with
13 the probability aspects.

14 MR. GALLO: The difficulty in dealing with the
15 probability aspect is that there is no experience on the
16 shipments of such explosives in terms of accidents and the
17 number of shipments that are completely unknown, in order
18 to come up with the limits of a probability analysis.
19 There's just not enough information. One would have to
20 postulate so many facts that the result would be
21 essentially meaningless.

22 JUDGE BRENNER: You just reinforced the view
23 that settlement negotiations are open, because if you
24 think you are going to get to that point at the
25 evidentiary hearing, the parties among themselves had

1 better get together on that point now, or soon, to discuss
2 what sort of condition could be written in. Because if
3 all the parties agree that there's such uncertainty with
4 respect to RDX and HMX, obviously such a condition to the
5 extent one could be developed that satisfies all the
6 parties, would be the way to go.

7 MR. GALLO: We had not been able to arrive at
8 agreement previously. Perhaps now with Mr. Bock's present
9 suggestion we'd be able to do so, but it's the Applicant's
10 litigation position that in the absence of agreement
11 that's our posture. We will show that the plant has been
12 designed adequately for one box car of flake TNT, the
13 probabilities for two or more is too low to consider, and
14 with respect to RDX/HMX they need not be considered at
15 this time with the protection of a license condition.

16 JUDGE BRENNER: Right. I understand. What I'm
17 saying is maybe some or all of that -- some agreement
18 could be reached.

19 MR. GALLO: We'll undertake to do that, your
20 Honor.

21 JUDGE BRENNER: All right. We'll break at this
22 time. We will come back with the subject of quality
23 assurance, which is quite a large subject. Related to
24 that is the proposed schedule.

25 When we come back we have at least one question as

1 to what is meant by some of these shorthand references in
2 the schedule; such as, we want to make sure we understand
3 what is included or excluded by the so-called 82-05
4 matter, and we also have to talk about harassment and the
5 parties can advise us to the extent of the agreement or
6 disagreement on the writing provided to us earlier today
7 and how that relates to the schedule also.

8 MR. CASSEL: Judge, before the lunch break
9 could I ask for one scheduling question which I'll keep
10 brief the court reporter's sake?

11 JUDGE BRENNER: Don't make the reporter angry
12 at you.

13 MR. CASSEL: The scheduled order specified 9:00
14 a.m. tomorrow.

15 JUDGE BRENNER: That's not what I meant to
16 say. I meant 9:30.

17 MR. CASSEL: Maybe I misread it. Really what
18 I'm getting at is I have another matter in Chicago
19 tomorrow afternoon and I wanted to find out about what
20 time you would anticipate whatever proceedings might
21 relate to the site visit to conclude tomorrow?

22 JUDGE BRENNER: There won't be any proceedings
23 and you don't have to be there. We are not going to
24 discuss anything. It's just for us to see the site. We
25 have a few items that we are interested in seeing but we

1 also want a general site tour.

2 Frankly, in this case there's less to be gleaned
3 from a site visit than in some other cases where
4 contentions relate to specific hardware.

5 Let me add, a visit at this time is without
6 prejudice to the Board wanting one later as evidence maybe
7 develops as to other things. I guess I thought we could
8 do it in less than three hours. As soon as I find my
9 order I'll see what I thought we would take earlier. I
10 have the order now. On the notice of prehearing
11 conference we said, "The Board will visit the Braidwood
12 site on July 24, from 9:30 a.m. to approximately 11:30
13 a.m." That was the estimate I made up. To the extent its
14 starting time is accurate, I don't know about the ending
15 time.

16 MR. CASSEL: I apologize about missing the
17 digit.

18 JUDGE BRENNER: You don't have to be there.

19 MR. CASSEL: I very much want to and will be
20 there.

21 JUDGE BRENNER: I don't know if you have been
22 at sites under construction. Dress very casually and
23 don't worry about offending us because I'm going to dress
24 casually. Usually they are dusty and dirty and so on.

25 MR. GALLO: Judge Brenner, should the site

1 people assume that the Board will arrive at the site at
2 about 9:30, then?

3 JUDGE BRENNER: Yes. We'll try to get there a
4 little before so we are ready to begin at 9:30.

5 MR. GALLO: All right. Consistent with the
6 Board's order, I've advised the people at the site that
7 there will probably be no more than two individuals from
8 each of the parties.

9 JUDGE BRENNER: That's up to you and the
10 parties in the first instance. I covered that in the
11 order. We set no particular number, though. You see my
12 reference?

13 MR. GALLO: Yes.

14 JUDGE BRENNER: I said "manageably small." We
15 do have the limited appearance session this evening in the
16 city council chambers, and let me say that we expect
17 representatives of the Staff and Applicant to be there and
18 representatives of other parties are welcome to be there.
19 You are not required to be there. That's at 7:00 this
20 evening.

21 MR. CASSEL: Where are the city council
22 chambers?

23 JUDGE BRENNER: It's in the order. It's down
24 Jefferson Street. 144 I think. Around there.

25 MR. CASSEL: Towards the river.

1 JUDGE BRENNER: We think we can give you ample
2 time for the lunch break; that is, two hours, and still
3 have plenty of time to complete the remaining matters at
4 this prehearing conference. We'd like to be reasonably
5 assured of being finished at around 4:30. Earlier is
6 better but no later. Unless the parties are going to
7 spring something we don't expect on us this afternoon we
8 think 2-1/2 hours from 2:00 to 4:30 with one recess in
9 between will be ample time, is that right? So the quid
10 pro quo for giving you two hours for lunch is making sure
11 we finish in time after the lunch break and then we'll
12 come back at 2:00.

13 (Whereupon, at 12:00 p.m. The hearing was
14 recessed, to be reconvened at 2:00 p.m. this same day.)

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1 AFTERNOON SESSION (2:05 p.m.)

2 JUDGE BRENNER: Back on record. Good
3 afternoon, we wanted to come back to the items we held
4 over from this morning and I guess the subject of Mrs.
5 Rorem's failure to respond to the interrogatories in our
6 order compelling the response would be the first matter
7 we'd be willing to take up unless the parties -- has
8 something been worked out on that?

9 MS. CHAN: Yes. Ms. Rorem has agreed to
10 respond to the interrogatories on August 1st.

11 JUDGE BRENNER: Is that a received date?

12 MS. CHAN: That's a file date; first class
13 mail.

14 JUDGE BRENNER: Is that correct, Mrs. Rorem?

15 MRS. ROREM: Yes, it is.

16 JUDGE BRENNER: This is it. This is our order
17 entered now. Don't wait for a written order. Failure to
18 comply now will have the serious consequences of a
19 default.

20 That is our ruling with respect to the
21 interrogatories set two with the exception of number 21,
22 which everybody agreed was now moot.

23 What about the Applicant's motion to compel an
24 answer with respect to Mrs. Rorem's potential consultants,
25 which arose during the deposition? Has anything been

1 agreed to with respect to that?

2 MRS. ROREM: Nothing has been agreed to. It is
3 my understanding that the Rules of Civil Procedure for the
4 United States District Courts allow me to not make known
5 expert witnesses and Mr. Copeland gave to Mr. Cassel a
6 paper before the Atomic Safety and Licensing Board, I'm
7 not sure what the proceeding is -- but, anyway, according
8 to this it -- in this it states that, on the basis of
9 their own judgment and experience -- experience and
10 judgment, we believe that as a general proposition the
11 Intervenor's need for confidentiality outweighs the
12 Applicant and Staff needs for information.

13 JUDGE BRENNER: It depends on the context.

14 MRS. ROREM: We believe that some would desist
15 from their need if they knew the outcome would be this
16 close. At this time I have not retained any expert
17 witnesses so I do not believe I need to disclose to either
18 the Applicant or the Staff what parties I have consulted.

19 JUDGE BRENNER: So that status is not that of
20 proposed witnesses but they are potential witnesses?

21 MRS. ROREM: That's right.

22 JUDGE BRENNER: You are going to have to decide
23 at some point whether they are witnesses, regardless of
24 our ruling on this discovery dispute.

25 MRS. ROREM: That's correct.

1 JUDGE BRENNER: Let me jump subjects for a
2 moment and come back to that subject. Has anything been
3 decided with respect to the schedule for litigation of
4 Rorem contention 1(a)?

5 MR. GALLO: The Applicant's position is we are
6 ready to proceed as of October 1. We understand that the
7 -- I won't speak for the Staff -- but we understand that
8 they also will be able to proceed by October 1, so,
9 therefore, we would stick with the date that had already
10 been established by the licensing Board on that issue.

11 JUDGE BRENNER: Has the brochure been issued?

12 MR. GALLO: It has not been issued in draft
13 form or in final form; no, sir. It is supposed to issue
14 within the next couple of weeks, as I understand it.

15 JUDGE BRENNER: As part of the estimated first
16 week in August issuance of the other state and local
17 plan?

18 MR. GALLO: Since that's under our control, it
19 seems to me we should be able to issue it with a lot more
20 guarantee than what the state might take.

21 JUDGE BRENNER: Forgive me if I'm repeating
22 some of this morning. After it's proposed -- it's a
23 brochure proposed by the utility; correct?

24 MR. GALLO: Yes, sir.

25 JUDGE BRENNER: Then the state has to approve

1 it?

2 MR. GALLO: No. As I understand it, it is
3 simply submitted as a part of the emergency plans for the
4 state and the local governments which they use for
5 purposes of implementing and including in their emergency
6 plans. My understanding is that they are in a position
7 to act rather quickly on that, since the brochures in the
8 main are the same for each of Edison's nuclear power
9 stations with the exception of the identification of radio
10 stations in the map of the locale, that kind of
11 information.

12 JUDGE BRENNER: Is what you told me the same as
13 the view that the state has to approve it? Do they
14 exercise more than just a ministerial function in
15 determining whether to include it as part of their plan?
16 I know other states do.

17 MR. GALLO: If I could have a moment?

18 (Discussion off the record.)

19 MR. GALLO: I'm advised that the state has a
20 draft in their possession and they are reviewing it within
21 the same time frame that they expect to complete their
22 review of the -- of their own plan and they expect to
23 issue by the first week of August, not only their plan but
24 also would -- that issuance would include a concurrence
25 with respect to the pamphlet as well. So, I misstated

1 what I said. We had not issued the draft as of this
2 time.

3 JUDGE BRENNER: What about the Staff's review
4 of FEMA's review? Or both? Ms. Chan?

5 MS. CHAN: It was the understanding of the
6 Staff this morning when we said that the Staff would --
7 and FEMA would be prepared to testify on the adequacy of
8 the brochure, that 1(a) was limited to the adequacy of the
9 brochure. If that is true, the Staff is prepared and FEMA
10 will be prepared to submit written testimony by the due
11 date in time for the October 1st hearing.

12 JUDGE BRENNER: Shouldn't there be some Staff
13 review available in advance of the testimony filing date
14 if we are going to hold everyone to a simultaneous
15 testimony filing date?

16 MS. CHAN: The Staff -- I discussed this with
17 FEMA on the telephone during the lunch break, and talked
18 to a Wally Weaver, who is the chief of their technological
19 hazards branch, and he has said that if he receives --

20 JUDGE BRENNER: My question is, as a matter of
21 legal practice and NRC practice shouldn't there be a
22 review available prior to the time that other parties
23 would have to file testimony? Normally there is some
24 underlying review before the testimony filing date. The
25 testimony is used to focus the disagreements.

1 MS. CHAN: The deadline that FEMA has given me
2 on the availability position is the filing date for the
3 testimony. I have not been able to move that date up to
4 allow for --

5 JUDGE BRENNER: You haven't answered my
6 question. I'm not interested in FEMA's schedule
7 problems. I'm interested in your legal view.

8 MS. CHAN: Yes. I believe there should be time
9 made available between the time of the Staff's position
10 and the time of the testimony.

11 JUDGE BRENNER: But you are telling me that you
12 can't assure that could occur and still hold the October
13 1st date?

14 MS. CHAN: I do not have a commitment from FEMA
15 to have their testimony available earlier in time to allow
16 for the discovery, prior to the filing of testimony.

17 JUDGE BRENNER: I didn't say necessarily that
18 discovery had to follow, but what I'm talking about, for
19 the moment, is just the availability of the review.

20 MS. CHAN: They have not committed to having
21 the review available earlier.

22 JUDGE BRENNER: It is correct that the NRC
23 Staff plans to have FEMA review the brochure?

24 MS. CHAN: Yes. FEMA is going to review the
25 brochure.

1 JUDGE BRENNER: So, how can you give me the
2 information that you just gave me and still say we should
3 hold the October 1st date? It sounds internally
4 inconsistent.

5 MS. CHAN: The agreement with FEMA at the time
6 the contention came up was they would have testimony
7 available, they would be prepared to testimony or file
8 direct testimony on the date presented by the Board. We
9 did not at that time allow time for discovery. And the
10 only request we had made from MEMA was that they would
11 have the testimony by that due date.

12 JUDGE BRENNER: You haven't focused on my
13 question. How can you tell me what you are telling me
14 about the schedule and also your view that review should
15 be available prior to the simultaneous date for filing of
16 testimony, and yet also tell me that the October 1st
17 hearing schedule is appropriate for that contention 1(a)?
18 I'm just asking you. I'm trying to put it all together
19 and your position seems internally inconsistent to me.

20 MS. CHAN: If we have their position earlier,
21 prior to the date they have committed to, we will have the
22 time available for the October 1 date. If they do not
23 provide their position prior to the time of filing, we
24 will not be able to make the October 1 date.

25 JUDGE BRENNER: You are asking me to set a

1 schedule. How --

2 MS. CHAN: May I suggest, if they are agreed to
3 have their testimony prepared on the original date of the
4 filing of testimony, if the hearing were to be postponed a
5 week, if that's sufficient time -- that might be a
6 possible solution.

7 JUDGE BRENNER: Ms. Rorem, did you want to
8 contribute to this?

9 MRS. ROREM: Yes. As I have informed both the
10 Staff and Applicant, I do not believe that the brochure is
11 the only matter that is present in contention 1(a). I
12 believe that a program for informing the public involves
13 quite a few other things besides the brochure and I had
14 stated that in my deposition.

15 I don't think that until the plan is available and
16 the standard operating procedures are available, that
17 there's anyway in which I can put them side by side and
18 see any manners in which I think that the plan is
19 inconsistent with the criteria and I don't think it's
20 possible to have it ready by the October date that they
21 wish.

22 JUDGE BRENNER: You don't think it's possible
23 for who to have what ready?

24 MRS. ROREM: I think that I, for one thing, am
25 going to be having many questions, which I see -- specific

1 questions -- when I have seen the plan and the criteria,
2 side by side. And they are talking about it as though we
3 are only talking about the brochure. The brochure is not
4 the entire program. There are other aspects to it.

5 I had assumed when they asked for a postponement
6 until January or so, that they meant part 1(a) as well.

7 MS. CHAN: Your Honor, since it is clear from
8 Ms. Rorem's characterization of her contention that it
9 goes well beyond the determination of the adequacy of the
10 brochure, the Staff is not prepared to present testimony
11 on that by October 1.

12 JUDGE BRENNER: Would you agree with her
13 characterization of the contention?

14 MS. CHAN: Your Honor, it's her contention.
15 Based on the deposition she gave in May, she seemed to
16 focus on the adequacy of the brochure, particularly the
17 language of the brochure that was in question. And based
18 on that we assumed that that was the object of her
19 contention.

20 At this time, and since then, she has apparently
21 expanded on her contention and on that basis we can in the
22 guarantee to provide testimony by October 1 if her
23 contention has grown since our original commitment.

24 MRS. ROREM: Excuse me --

25 JUDGE BRENNER: Let me hear from the Applicant

1 and I'll come back to you. Mr. Gallo? Unless you don't
2 want to be heard?

3 MR. GALLO: That's an inviting suggestion, your
4 Honor.

5 JUDGE BRENNER: Some people should take
6 advantage of a golden opportunity to be silent.

7 MR. GALLO: To be silent?

8 The contention as framed is clear on one aspect. It
9 questions the ability of the dissemination of information
10 with respect to emergency planning matters in the 10-mile
11 EPZ; whether that's done by the pamphlet or whatever other
12 means that might be available or prescribed by NRC
13 regulations and the implementing document, NUREG 0654.

14 Beyond that I cannot put parameters around
15 Ms. Rorem's contention, but I can look at section G of
16 NUREG 0654, and see what that guiding document provides in
17 the way of suggesting means for disseminating information
18 on emergency planning matters to the public.

19 Using that information as a guideline, I believe
20 that the contention at its maximum is within the
21 parameters as described in NUREG 0654; necessarily could
22 carry you beyond a consideration of the pamphlet alone.

23 There's a suggestion that the dissemination might be
24 made by inserting information in the telephone book,
25 information in utility bills, posting in public areas and

1 that sort of thing.

2 So I think, without tying Ms. Rorem's contention or
3 being able to tie Ms. Rorem's contention any more narrowly
4 than we have to date, that the contention, at least,
5 involves the matters described in paragraph (g) of NUREG
6 0654. It begins on page 49.

7 And if I'm unable to, in the future, to define
8 better the scope of the contention I will be guided by
9 what's in NUREG 0654 on pages 49, 50, et seq., to
10 determine what the burden of proof is to satisfy on the
11 issue.

12 Now, to the extent that that is broader than just
13 the pamphlet, the Staff has indicated some inability to be
14 ready for an October 1 hearing date. If that's their
15 position, then it seems to me to be dispositive of the
16 question of whether or not we can go to hearing on October
17 1, unless I were to take a position that they should be
18 ready and should be required to go forward. I don't
19 choose to do that.

20 JUDGE BRENNER: Mrs. Rorem?

21 MRS. ROREM: Thank you. I would like to take
22 issue with what Ms. Chan said. In my responses to the
23 interrogatories propounded by Commonwealth Edison, by
24 Isham, Lincoln and Beale, before, prior to the time of my
25 deposition, they asked if I would be satisfied with a

1 brochure, et cetera, et cetera. And I stated very
2 clearly: No. That I felt an informative brochure was
3 part of but was not -- did not constitute all of an
4 information program.

5 I reiterated that, I believe, at the deposition.
6 So, I don't like your characterization of my
7 interpretation of my own contention to be that I expanded
8 it after the deposition. I have not expanded it
9 recently. It was much larger earlier on. If you didn't
10 realize that, I don't think that's my fault.

11 JUDGE BRENNER: For what it's worth to you, I
12 recall your answer as being what you just said it was.

13 MRS. ROREM: Thank you. In terms of what
14 Mr. Gallo just said and the reference he made to NUREG
15 0654, page 49, it states that the information shall
16 include -- wait, excuse me. It explains -- "means for
17 accomplishing this dissemination may include but are not
18 necessarily limited to --" I think it's extremely
19 important to talk about all the ways, beyond even these,
20 that information should be disseminated so that the people
21 who live in the emergency planning zone understand the
22 information.

23 JUDGE BRENNER: You can argue, incidentally, as
24 to any issue that NUREG 0654 is not sufficient. Somebody
25 else can argue from the other point of view, that it's not

1 necessary, it's not a regulation.

2 MRS. ROREM: That's true, but we haven't argued
3 that. He hasn't argued that. He's made reference to
4 it --

5 JUDGE BRENNER: I just wanted you to know
6 that.

7 What do you want to do, fellows? There's two
8 possibilities. We can just hold it over for a later time,
9 either January or some period in between October and
10 January, of uncertain estimate, given FEMA's uncertain
11 schedule or we can schedule it to go ahead shortly after
12 October 1st, by setting it as not being the first
13 contention. That is, setting Neiner Farms, one of their
14 contentions first, assuming it isn't otherwise disposed of
15 prior to litigation, and picking some schedule that I can
16 do very quickly to start the litigation of this contention
17 and take it as far as we can take it at that point and
18 then we'll find out who is right about whether or not
19 there's enough information at that time and hold out the
20 possibility of coming back to fill in after that.

21 It happens that, as a Board, we suspected we might
22 end up in a situation like this and we are willing to
23 accept either possibility.

24 MR. GALLO: I would support the latter view,
25 your Honor. That is, plan for October 1st, and see what

1 the developments bring in terms of FEMA position and
2 information availability. And go as far as possible on
3 October 1st.

4 JUDGE BRENNER: Ms. Rorem, you'd rather wait
5 until January? Or sometime after October, anyway?

6 MRS. ROREM: I prefer to wait until January.

7 JUDGE BRENNER: January was picked as a date, I
8 suspect, because of the QA issue and not the emergency
9 planning -- although I don't know that. I'll ask later.
10 Staff?

11 MS. CHAN: Staff has just found out that FEMA
12 has made an agreement with NRC headquarters, contrary to
13 the original agreement, to have their interim findings six
14 weeks after they receive the state and local plans as
15 represented earlier by Staff.

16 JUDGE BRENNER: We were figuring two months.

17 MS. CHAN: And the current date is December 1,
18 for interim findings on the local plan -- state and local
19 plan. On that basis we will not be ready October 1 to go
20 forward with the support of FEMA findings on the state and
21 local plans.

22 JUDGE BRENNER: That's on everything?

23 MS. CHAN: Yes.

24 JUDGE BRENNER: You didn't necessarily
25 highlight one issue for FEMA to look at on a priority

1 basis?

2 MS. CHAN: The brochure was to be looked at on
3 a priority basis to be ready to be looked at on October
4 1. However, since the contention involves more than just
5 the adequacy of the brochure itself, October 1 would not
6 be a meaningful date to litigate the rest of the issues
7 surrounding the brochure, as to the implementation of its
8 distribution and how effective its distribution is.

9 JUDGE BRENNER: Now, FEMA still expects to get
10 the plans -- FEMA still expects to get the plans the 1st
11 of August and based on that supposition they are
12 scheduling December 1st?

13 MS. CHAN: Yes.

14 JUDGE BRENNER: Not without explaining good
15 reasons why. I can tell you that now.

16 (Discussion off the record.)

17 JUDGE COLE: Ms. Chan, I want to make sure I
18 understand correctly what you said. FEMA is going to get
19 the plans sometime in August; is that correct?

20 MS. CHAN: That's correct.

21 JUDGE COLE: Did you say their original plan
22 was six weeks and it's now changed to something like 10
23 weeks?

24 MS. CHAN: Their original commitment was, I
25 believe six to eight weeks, the number I told you in the

1 filing. And that was with the people who actually did --
2 the technological hazards branch had an agreement with
3 region 3, NRC, to have this at that time. However, their
4 headquarters for FEMA and headquarters for NRC have
5 negotiated a different date, which is December 1. I just
6 found that information out and I thought I'd put it before
7 the Board.

8 JUDGE COLE: And December 1 is for interim
9 findings?

10 MS. CHAN: Interim findings for FEMA giving
11 them to the NRC.

12 JUDGE COLE: And that assumes they are going to
13 receive them in early August?

14 MS. CHAN: Yes. To the best of my knowledge,
15 sir.

16 Your Honor, I should point out that these interim
17 findings, I believe the reason that they are moved to
18 December 1 is that there's to be an exercise on November
19 6, and that the interim findings may rely somewhat on that
20 exercise.

21 JUDGE BRENNER: In the proposed schedule,
22 though, we have not really gotten to it fully -- but I
23 have to look at it now as related to this information --
24 this is a December 23rd date proposed by all the parties
25 for the filing of testimony on certain matters. I take it

1 that included those emergency planning issues, which would
2 not be litigated until January?

3 MR. GALLO: Yes, your Honor.

4 MS. CHAN: Yes, your Honor.

5 JUDGE BRENNER: You are not proposing that that
6 date be changed, Ms. Chan, are you?

7 MS. CHAN: No, your Honor.

8 JUDGE BRENNER: What date does FEMA have to
9 receive the state and local plans by in August in order
10 for this December 1st date to be an absolutely promised
11 last day?

12 MS. CHAN: They were told they would receive
13 them the first week in August.

14 (Discussion off the record.)

15 JUDGE BRENNER: All right. We are prepared to
16 rule on the schedule for emergency planning. Rather than
17 question FEMA's reasons for a December 1st date, Ms. Chan,
18 we'll accept that as the day. And we accept that in the
19 context that it is not a -- we'll accept it as the date
20 with respect to -- except for matters with respect to
21 1(a). We'll get that to a moment. We are not accepting
22 that as a present estimate date subject to revision by one
23 week or two weeks or three days as we get closer to it.

24 Given the substantial length of time between receipt
25 of the plans, assuming that occurs fairly early in August,

1 and December 1st, and the fact that FEMA and the Staff and
2 anybody else can be working on their review before the
3 exercise except for the matters that then have to be
4 reviewed as part of the exercise, there is no reason why
5 that date should change and it should be viewed as a last
6 date not an estimate. That's the date we are going to put
7 in our schedule that we are going to confirm by order so
8 that it will be an order by the Board which parties cannot
9 unilaterally change without coming back to the Board for
10 good cause shown.

11 Of course, it assumes them receiving the plans in
12 early August.

13 With respect to the 1(a) issue there is some
14 uncertainty as to the scope of that issue and, Mrs. Rorem,
15 we understand that you don't mean to limit it to the
16 brochure. I understood that since your discovery answer.
17 However, having said that, I don't know what the
18 parameters are, and I'm afraid you have not articulated
19 any today, which is okay, but that's just a comment on the
20 present state of affairs with respect to that contention.
21 I don't know if there's anything in the background
22 original contention filing on it or not, at this moment in
23 my own mind. As you know, this contention was admitted
24 some six years ago this month.

25 We are going to schedule that contention for

1 litigation the second week of October. It would be the
2 week of October 7th. As parties get closer to the hearing
3 they'll have to take means -- I don't know what means that
4 will be -- but you don't need the Board's intercession to
5 get together among yourselves informally and find out what
6 the scope of this issue is. We have had discovery on it
7 but, obviously, there's still some uncertainty. And to
8 the extent uncertainty remains, parties at the litigation
9 can take different positions as to what is necessary. And
10 we'll look at it based on the evidence.

11 Now, we expect to have -- don't expect, we will, as
12 part of the schedule that we'll confirm by order, we'll
13 hold to that September 13th date for FEMA's review of
14 issues affected by 1(a). Now I understand there is some
15 uncertainty as to what those issues are. But it's at
16 least a brochure plus whatever other means that is deemed
17 appropriate, by FEMA and the Staff at least, from the
18 point of view of the FEMA Staff testimony, of what is
19 necessary to do what the contention talks about.

20 MR. GUILD: Judge Brenner --

21 JUDGE BRENNER: Let me finish. We'll hold to
22 the September 13th date to that. There is no reason, it
23 seems to us as a board, why certain discrete issues can't
24 be prioritized. We don't have to sit here impotent while
25 some other body sets schedules for their own reasons.

1 Given that September 13th date, that's a received
2 date by all parties, all participating parties in that
3 contention -- we will set the date for filing testimony on
4 that subject as September 20th. That, too, is a receipt
5 date. But, by then, the parties should know what it is
6 they want to put in testimony in terms of what they want
7 to disagree with.

8 Remember, Mrs. Rorem, you'll have the plans early in
9 August. All this is based on the assumption, actually as
10 late as September 20th, as long as you get it in August
11 you are in good shape. But some of these assumptions will
12 have to change because of FEMA's schedule if a plan is not
13 submitted to them early in August. So you'll have the
14 plans at that point. And whatever you think is deficient
15 from that point on, that's what you'll cross-examine the
16 other parties on and that's what you'll put in your
17 testimony and we'll decide whether we agree with you it's
18 deficient. You cannot just sit back and say: This is
19 deficient and that's deficient so we won't move forward.
20 We'll move forward and see if we agree with you.

21 Now, as part of the litigation in October, it may
22 become apparent to the Board or everybody else that
23 there's some further information that has to be added at a
24 later time and we'll deal with that at that time if that
25 circumstance arises. We'll adjust some of the less

1 important dates that flow from the testimony filing dates,
2 such as the filing of the motions to strike, testimony,
3 and cross-examination plans and so on -- we'll give you
4 those details in a further order.

5 Mr. Guild, do you want to add something?

6 MR. GUILD: Yes, your Honor. I was a
7 participant in some of the discussion over luncheon
8 recess, between Ms. Chan and Ms. Rorem on that subject and
9 observed to them and ought to state for the record that
10 it's my observation that FEMA, as part of its guidance
11 document, FEMA 43 makes a commitment to conduct a review
12 of alert and notification systems by way of a public
13 information survey that's generally to be conducted
14 simultaneously with an exercise.

15 Their practice has not been to subject such
16 reviews. There are very few of them, to my knowledge,
17 that have in fact been conducted. But since that point
18 may arise in litigation of this contention I thought that
19 the Board should be apprised of what now appears to be a
20 drill commitment that falls after your proposed hearing
21 date.

22 JUDGE BRENNER: Thank you. That would fall
23 under any possible adjustments. But I don't want to stand
24 dead in the water and assume that important information
25 will come later. It's a balance. Our judgment now is

1 that we can achieve substantial information on the record
2 on this contention, on the dates we just set, knowing that
3 there may be some gaps and they'll have to be filled in --

4 MR. GUILD: I think the chairman addressed that
5 eventuality by stating that there may be further need for
6 hearings on the subject.

7 JUDGE BRENNER: Any questions on that schedule
8 so far?

9 All right. That gets us back to identifying your
10 consultants, Mrs. Rorem. I don't know what case you
11 extracted the quote from, and neither do you, apparently,
12 but I can't tell much from what you told me because there
13 are different circumstances where you have confidential
14 informants for some purpose, and we'll discuss that in
15 another context later -- than just the fact that you have
16 persons you are talking with. On the other hand, I'm not
17 sure of the value of the substantive information needs of
18 the Applicant of their learning names of persons that you
19 are just talking with at this point.

20 As I understand it, any definite information that
21 you have had, you have now given them. The only thing you
22 don't want to give them are the names of people from whom
23 you may have obtained some of that information.

24 MRS. ROREM: That is correct.

25 JUDGE BRENNER: Mr. Gallo, can you help me

1 understand the dire needs of the Applicant in obtaining
2 the names now of persons she's spoken with, as opposed to
3 getting the names a little further down if and when they
4 become definitive witnesses?

5 MR. GALLO: Well, during the deposition
6 of Ms. Rorem I indicated that some of the individuals she
7 had talked to were state and local representatives
8 involved in emergency planning. And Commonwealth Edison
9 Company is interested in, upon learning the identity of
10 these individuals, contacting them and determining whether
11 or not there are any problems or concerns that they might
12 have with respect to the emergency planning activities
13 surrounding the Braidwood station so that corrective
14 action, if that's appropriate, or informational guidelines
15 and informational lines can be established with the proper
16 authorities in the state or however these kinds of
17 solutions might be appropriate.

18 As long as these people remain anonymous, we are not
19 able to do that.

20 I don't accept the premise in Ms. Rorem's reply,
21 that she was -- at the time she answered the questions at
22 the deposition I was led to believe that we were talking
23 about individuals who were involved in fact situations.
24 And they might be characterized as not experts but
25 individuals who simply had facts that were relevant to the

1 issue.

2 If that's the case, as I see it, then the exception
3 for privilege involved in consulting experts is simply not
4 applicable.

5 JUDGE BRENNER: Ms. Rorem, did you want to
6 comment on Mr. Gallo's belief of what you meant on the
7 deposition?

8 MRS. ROREM: I meant that they were experts. I
9 don't know how -- pardon me, I'm not an attorney. I'm not
10 exactly sure what you just said to me. Okay?

11 JUDGE BRENNER: He thinks that you spoke to
12 people who know of particular factual problems in
13 emergency planning around Braidwood, as opposed to people
14 who are generally knowledgeable as to emergency planning
15 procedures and requirements.

16 MRS. ROREM: No. That's not the case.

17 JUDGE BRENNER: See, if it had been the case he
18 would then want to learn exactly what the particular
19 problem is so he can prepare to argue that their problem
20 is a non-problem or so he can prepare to have the problem
21 fixed.

22 MRS. ROREM: I understand. I see.

23 JUDGE BRENNER: But that's not the case?

24 MRS. ROREM: No. It's not the case.

25 JUDGE BRENNER: Mrs. Rorem, we have a 41(a)

1 issue. We have a testimony filing date of September
2 20th. Obviously, you have to know -- that's a testimony
3 receipt date of September 20. Obviously you'd have to
4 know in advance of that date who your witnesses are, if
5 any. Can you suggest a reasonable time in advance of that
6 date as to when the parties could exchange names of
7 proposed witnesses or a statement that there will be no
8 proposed witnesses?

9 MRS. ROREM: I have to file my proposed
10 testimony from my witnesses by September 20; correct?

11 JUDGE BRENNER: It has to be received by
12 September 20.

13 MRS. ROREM: It has to be received by then. Is
14 it required that I let the other parties know who my
15 witnesses are before that time?

16 JUDGE BRENNER: In the circumstances of this
17 particular case we are going to order that and we have the
18 authority to do that. And the reason we are going to
19 order that is to try to draw a balance between the fact
20 that you presently don't want to state who it is you've
21 consulted with, for the reasons you have given, and the
22 fact that to the extent it turns out that you are going to
23 use any witnesses for which the Applicant or Staff have to
24 get information prepared to -- so they can factor that
25 into their testimony, that would be helpful. It would

1 also be helpful to the Board since that issue can then be
2 joined at the hearing.

3 An alternative that we are not talking about would
4 be to have you file your testimony earlier and then have a
5 sequential filing but that's a little more burdensome for
6 you and we are not talking about that.

7 There's a quid pro quo, you are going to have their
8 witness list too and a brief outline of the subject of the
9 testimony. We don't always order that. Sometimes we do.
10 In this case we think it will be helpful to us so from our
11 selfish point of view, plus from the balancing of these
12 competing interests, we want to do it.

13 I'll tell you that there are some privileges,
14 usually as ascribed to commercial relations, where
15 companies are talking to experts in other fields or for
16 other companies and they are afraid of adversely affecting
17 negotiations of some sort, normally of a contractual
18 nature. And then a balance is drawn on allowing them to
19 disclose it later. That's not quite the situation here.
20 And, frankly, if I felt it was necessary to rule today, in
21 order to protect the rights of other parties in the case,
22 you might have a problem. But I don't think it's
23 necessary. I think we can balance the competing
24 interests, based on the discussion we heard so far.

25 I was considering that sometime quite early in

1 September would be reasonable to set.

2 MRS. ROREM: This is all premised upon, in any
3 way, the actuality of the plan being released in the first
4 week in August?

5 JUDGE BRENNER: Early -- I purposely said
6 "early" August; in case it misses the first week by a day
7 or two I really don't want to get involved.

8 MRS. ROREM: True. But if it turns out to be
9 the end of August that doesn't make a difference?

10 JUDGE BRENNER: I'm agreeing with your
11 statement as I modified it. This is premised on the plans
12 being available early in August.

13 MRS. ROREM: Okay. That's fine.

14 JUDGE BRENNER: Available to you. Not a note
15 that you can come see pieces of it in some library 30
16 miles from your home.

17 MRS. ROREM: Okay. Thank you.

18 JUDGE BRENNER: So I'm sure one or all of these
19 parties are going to be sure that you get a copy.

20 MRS. ROREM: Judge Brenner, I'm assuming that
21 the standard operating procedures will be released or will
22 be present along with the plan. Is that correct?

23 JUDGE BRENNER: Not necessarily. I'm not
24 addressing that. That's the difference between having an
25 abstract discussion today that may be of no avail and

1 having a discussion of a particular possible procedure in
2 the context of a particular contention in the context of a
3 particular part of the plan that you say at the hearing is
4 deficient without that procedure. It's very difficult to
5 talk about such things in the abstract because it turns on
6 the particular problem at hand, very often.

7 You can be free to argue, if the procedure isn't
8 available, that we cannot find a plan is adequate without
9 the procedure and give us a reason, of course.

10 What about a received date of September 4th, for an
11 exchange among all parties, and you can do it on the phone
12 and then confirm it in writing later or whatever is
13 convenient for all of you, of the names of all the
14 proposed witnesses on Rorem contention 1(a), a brief
15 statement of their affiliation, so people know who they
16 are; a brief statement of their qualifications, if
17 available the full professional qualifications, but if not
18 available, a brief summary; and a brief summary of what
19 the subjects of their proposed testimony are.

20 Now, in terms of 1(b)) the testimony filing date for
21 that is not until December 23rd; correct?

22 MR. GALLO: Yes.

23 JUDGE BRENNER: I'll ask you when we get to it
24 whether these are receive dates or filing dates. Filing
25 dates make me nervous because the mail is so haphazard.

1 In any event, unless the parties think we need to
2 address it I'm prepared at this time to leave open
3 whether, and if so how far in advance of December 23rd,
4 witnesses on that subject have to be identified. By that
5 point you'll have the experience of the earlier exchange
6 in September and I'm hoping that you'll all agree -- it's
7 in your interests to agree -- on such a date for at least
8 the 1(b) contention if not other contentions. But if that
9 becomes a problem you'll have time to get back to the
10 Board before then. So it's something you could,
11 hopefully, talk about and by the time you are before the
12 Board on other subjects in October, if necessary you can
13 raise it again.

14 Is there anything else we had to discuss with
15 respect to Mrs. Rorem's emergency planning contention?

16 All right, hearing nothing we'll turn back to the
17 Neiner Farms contention 1. Anything further from the
18 parties on that?

19 MR. BOCK: Judge Brenner we are fairly close on
20 language of a proposed condition and we'd like to offer a
21 received date of August 1st for us to file a joint
22 stipulation or, failing that, language from the Intervenor
23 and the Applicant along with perhaps some accompanying
24 argument for the Board's consideration.

25 JUDGE BRENNER: All right. In other words, if

1 you disagree you would put it together in a joint filing
2 for us.

3 If you reach agreement would that take care of
4 positions on summary disposition or would that just be an
5 agreement on a contention -- on a condition in the event
6 we grant summary disposition?

7 MR. BOCK: My position is that would be an
8 agreement on position; assuming that you determine summary
9 disposition.

10 JUDGE BRENNER: Did any party want to add
11 something to Mr. Bock's comments?

12 JUDGE BRENNER: All right. Fine. We'll await
13 the August 1st receipt of the report on proposed
14 conditions and we'll endeavor to get a ruling out on
15 summary disposition shortly after that.

16 MR. BOCK: Yes, on contention 4, the arsenal
17 contention, we have agreed and would propose a receipt
18 date of August 9th for a progress report which would
19 include any agreements that we will come to on the
20 arsenal, at that time.

21 JUDGE BRENNER: All right. Fine.

22 Give me a moment while I find my quality assurance
23 papers.

24 (Discussion off the record.)

25 JUDGE BRENNER: I think we'd like to understand

1 the schedule a little better, the proposed schedule
2 proposed by all parties. It might be good to get an
3 explanation of that from whichever party wants to give it
4 to us working in to the schedule as we get the
5 explanation, the proposed stipulation on the harassment
6 contention.

7 As we told you, one of the things we weren't clear
8 on is what was encompassed and excluded by the so-called
9 82-05 issue, which of course references the inspection --
10 MR. GALLO: Yes, Judge Brenner, I'll attempt to
11 provide further amplification with respect to the
12 schedule.

13 In a discussion that I had with Mr. Cassel the day
14 before this document was filed, which was July 19, we
15 concluded that the QC inspector harassment issue, if
16 admitted, could be woven into the same schedule as we had
17 for the other QA issues. And we kind of just introduced
18 it in the item for September 27. That reference is
19 intended to recognize the judgment that we could litigate
20 the QC inspector harassment issue across the same
21 milestones that are included in the schedule for the rest
22 of the issues on quality assurance.

23 It was not intended in any way by the reference of
24 the date of September 27th, to suggest there was a
25 relationship between the 82-05 issue and the QC inspector

1 harassment issue.

2 JUDGE BRENNER: That's clarifies one
3 ambiguity.

4 Go ahead, explain the 82-05 issue if you could by
5 means of reference to the contention or whatever means you
6 want to.

7 MR. GALLO: Yes. The contention is supported
8 by approximately 14 specific recitations of bases for the
9 contention.

10 Item 1 references are specifically the findings by
11 the NRC Staff in their I and E inspect report, 82-05,
12 raising questions concerning the installation of the
13 safety-related equipment and the inspection of that
14 installation by the mechanical contractor, mechanical
15 engineering contractors, Phillips Getschow.

16 That matter is referred to in a number of other
17 places throughout the contention, and it is that matter
18 that is referred to as the 82-05 issue -- 82-05, I should
19 say more correctly, 82-05 is simply the number of the
20 inspection report that first identified this particular
21 problem.

22 The corrective action plan that Commonwealth Edison
23 is undertaking is in progress and really is the one
24 corrective action plan -- or program, I should say, that
25 drives the schedule, because it's anticipated that the

1 other correction action programs that are relevant to the
2 contention will be completed in advance of the date set
3 for the corrective action program on safety related
4 equipment and the best possible date is as indicated on
5 the proposed schedule, October 1. And, at least based on
6 my reading of the contention, the matter involving the
7 installation of the safety-related equipment at Braidwood
8 is central to the contention and it was for that
9 reasonable that the schedule was structured as the Board
10 sees it.

11 JUDGE BRENNER: So the parties purposely didn't
12 go through the rigor or the effort of identifying where
13 else in the lengthy contention the issues relate to the
14 82-05 report on the possible problems with Phillips
15 Getschow's installation of equipment?

16 MR. GALLO: I cannot lead the Board to those
17 sections immediately off the top of my head but they are
18 fairly easily discernible.

19 JUDGE BRENNER: Some of them are less easy than
20 others.

21 For example, item 12(g) on page 43 of the contention
22 is fairly easily discernible, because it refers to
23 Phillips Getschow and references 82-05, so even we were
24 able to figure that one out. But there are some others
25 that may bear on the issue without an expressed reference

1 and we are not sure. Nor do I have a list of those
2 others.

3 But having said that and to save you some possible
4 effort at this time, let me note that the hearing schedule
5 proposed is one for all quality assurance issues. The
6 distinction of setting off that issue relates to the
7 discovery schedule and witness identification schedule.

8 MR. GALLO: That is correct.

9 JUDGE BRENNER: So, if the parties understand
10 what they are talking about I suppose we don't have to
11 worry about it right now until you suddenly determine that
12 you really didn't have a mutual agreement.

13 MR. GALLO: Yes. I'm looking, for example on
14 page 30, item 6 of the contention, there's a reference to
15 safety-related equipment there and Phillips Getschow.

16 JUDGE BRENNER: It's almost all safety-related
17 equipment. And then this portion is a subpart of
18 safety-related equipment.

19 MR. GALLO: Certainly in my thinking, Judge, if
20 you can use the term "buzz word," safety-related
21 equipment, is essentially referring to the matter raised
22 by the inspection report 82-05. But I agree with you.
23 The parties must sort out the various facets of the
24 contention and determine just where they fit and how they
25 should be addressed.

1 JUDGE BRENNER: All right. So if I were
2 hypothetically to write a prehearing conference order that
3 referenced this issue and I wanted to call it something a
4 little more elegant than the 82-05 issue I could say "The
5 Safety-related Equipment Installation Work by the
6 Subcontractor Phillips Getschow"?

7 MR. GALLO: I think that would be accurate. As
8 characterized in the inspection report itself, it was the
9 installation and -- inspection installation of
10 safety-related equipment installed by Phillips Getschow.

11 JUDGE BRENNER: Mr. Guild, do you agree with
12 the characterization?

13 MR. GUILD: As much as I have heard, Judge. We
14 are somewhat in the dark because the scope of the
15 corrective action program that Mr. Gallo has denominated
16 as safety-related equipment is not completely known to
17 us. It's simply identified by Applicant as he described
18 the bounding case. And we simply take Applicant at its
19 word that it is the bounding case. But, included in the
20 understanding among the parties is the preface to
21 Mr. Gallo's proposed schedule; and that is, that should
22 other corrective action programs prove to be limiting
23 cases as well, in the sense that a reasonable opportunity
24 for discovery would not be available, it is understood
25 that adjustments would be made.

1 But pass to 82-05, what Mr. Gallo has said is
2 consistent with the best understanding we have.

3 JUDGE BRENNER: All right. If that
4 circumstance should arise; that is, if one party should
5 believe that some other matter has become more limiting --
6 has become more limiting, discuss it with all the parties
7 before coming to the Board and see if you can work out an
8 adjustment and reach an agreement if that's necessary.

9 MR. GUILD: Yes. I think Applicant's counsel
10 have agreed informally to apprise the parties of their
11 scheduling knowledge as to the other correct action
12 programs so that we would be able to do that.

13 JUDGE BRENNER: Did you intend these dates to
14 be filing dates? That's the wording. My concern is we
15 have had occasions where sometimes the mail takes two
16 days, sometimes it takes five days. When you get this
17 close to a hearing, as close as you'll be on some steps on
18 the schedule, why not either file something a day or two
19 earlier or send it back by express mail.

20 MR. GALLO: In our discussions, Judge Brenner,
21 I don't believe we focused on that point because the
22 choice of words is largely mine; I intended them as file
23 dates. But I have no problem with converting them into
24 receive dates, if the other parties have no objection.

25 MR. GUILD: Perhaps an alternate solution,

1 Judge, would be to have those be dates on which someone
2 express-mailed the required filing so make it in effect
3 the next day as the receipt date? There was some
4 precision in the dates that were chosen to allow for
5 specific periods of time.

6 JUDGE BRENNER: I think there are a lot of
7 Fridays there, I haven't checked it. I would like to make
8 them received dates. When you are this far in advance of
9 the date I don't think it's unreasonable for us to tell
10 you now that you should adjust your thinking by
11 approximately a day as well as the means by which you file
12 things.

13 If you have a last minute problem you can generally
14 work out things among those that are in the local area.
15 Most of you have some representatives in Chicago, in fact
16 all of you have some representatives in Chicago, and you
17 can at least work it out through the Chicago
18 representatives if you get down to that problem. A better
19 situation is to make sure everyone gets it. But if you
20 get down to that problem, get it to the Chicago
21 representatives and they send it over the word processor
22 or telecopy it or wire, to the other representatives.

23 MR. GUILD: I think with that understanding,
24 your Honor, we can live with that adjustment.

25 JUDGE BRENNER: Mr. Guild, I'll tell you now --

1 I'll tell all the parties, although the instance is yours
2 that I have in mind -- be careful about certifying that
3 you are mailing something on a day when in fact it's not
4 mailed until late afternoon or the filing day. Because I
5 consider certification of when something is being mailed
6 to be an important matter.

7 MR. GUILD: If you have reference to a specific
8 instance, Judge, I think the certification stands as
9 true. If you are thinking after postmark date that was
10 the day after -- that's the postal service's fault.

11 JUDGE BRENNER: I'm thinking of the supplement
12 -- I'm thinking of the supplement to the July 12th motions
13 regarding harassment and intimidation. Though I
14 understand they were inadvertently sent by regular mail
15 rather than expedited mail, and I'm not talking about
16 that, what I'm talking about is the certification says
17 they were placed in the mail on the 15th.

18 MR. GUILD: Yes, they were, sir.

19 JUDGE BRENNER: They were postmarked p.m. on
20 the 16th.

21 MR. GUILD: They were mailed the day before and
22 I apologize --

23 JUDGE BRENNER: They were put in the mail
24 during business hours on the 15th?

25 MR. GUILD: Probably not. Probably after

1 closing business, sir.

2 JUDGE BRENNER: When I finalize an order after
3 close of business even when I get it in the mail I date it
4 the next day.

5 MR. GUILD: I'm glad you raise the fact because
6 in fact many of these efforts are very late night products
7 and we work as expeditiously we can, and we do value that
8 extra day, sir. If you put us on notice that's your
9 expectation we'll certainly live by it.

10 JUDGE BRENNER: Again, use something other than
11 the corner mailbox when you are that late.

12 MR. GUILD: Yes, sir.

13 JUDGE BRENNER: Well, we can and do approve the
14 proposed schedule including the understandings set forth
15 as the preamble to the proposed schedule, and we'll
16 combine the harassment issue and we'll talk about the
17 scope of that issue. But, in any event, the harassment
18 issue will be picked up as indicated by this schedule
19 also. And we will work in, in whatever schedule we issue,
20 the adjusted schedule for Mrs. Rorem's contention,
21 recognizing that what is being referred to here is the
22 1(b) issue and we'll add the schedule that we just earlier
23 ruled upon earlier for the 1(a) issue.

24 JUDGE BRENNER: The next item would be the
25 proposed agreement -- I should say joint stipulation of

1 quality control inspector harassment contention. We are
2 certainly pleased that the parties have been able to agree
3 on as much as they have, and we are prepared now to
4 discuss the disagreements.

5 Please, as soon as it is convenient, file the signed
6 copy in the normal fashion in the case. You have told me
7 that the unsigned copy which you have here is identical to
8 what you are going to file.

9 MR. GUILD: If it is acceptable to your Honor
10 that we have a signed copy bound in the record?

11 JUDGE BRENNER: That's fine. Except I want you
12 to keep one in the proceeding anyway even if we bind it
13 in.

14 We'll bind a copy in if you can give the reporter a
15 copy. Keep at least one signed copy so you can file that
16 later in the case.

17 MR. GUILD: We'll have to find ourselves a
18 copying machine, Judge, but we'll do that.

19 JUDGE BRENNER: Give him an unsigned copy to
20 bind in.

21 (Document follows:)

22

23

24

25

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
)	
COMMONWEALTH EDISON COMPANY)	
)	Dockets 50-456
(Braidwood Nuclear Power)	50-457
Station, Units 1 and 2))	

JOINT STIPULATION OF QUALITY CONTROL (QC)
INSPECTOR HARASSMENT CONTENTION

The parties below named, by their counsel, hereby stipulate and agree to the admission of a contention for litigation in this proceeding regarding claims of harassment and intimidation of Quality Control (QC) inspectors employed by the Braidwood site electrical contractor, the L.K. Comstock Engineering Company.

Commonwealth Edison Company (Applicant) and the Nuclear Regulatory Commission Staff enter this stipulation without waiving any positions they have taken with respect to the overall admissibility of the late-filed quality assurance contention previously admitted by the Licensing Board.

The parties agree that a contention in the terms set forth below should be admitted for litigation together with the additional documentary materials attached as Exhibits to Intervenor's July 12 and July 15, 1985, filings, which documents supply further specific incidents and factual bases for the contention. These documents are incorporated in this contention by reference as if fully set forth here.

While the parties are in substantial agreement as to the 211
text of the harassment contention, language not agreed to but
proposed by one or another party is indicated as follows:

1. text proposed by Intervenor but not agreed to
by either Applicant or the NRC Staff is indicated
by inclusion in brackets, [.....];
2. text proposed by Applicant but not agreed to by
Intervenor is indicated by underlining,

The parties are unable to agree to the adoption of a
protective order as sought by Intervenor.

WHEREFORE, the parties below named, by their counsel, do
stipulate to the admission of the attached contention for
litigation in this proceeding.

DATE:

Intervenor Bridget Little
Rorem, et al.

NRC Staff

Commonwealth Edison Company

Contrary to Criterion I, "Organization" of 10 C.F.R. Part 50, Appendix B, and 10 C.F.R. Section 50.7, Commonwealth Edison Company and its electrical contractor, L.K. Comstock Engineering Company have failed to provide sufficient authority and organizational freedom and independence from cost and schedule as opposed to safety considerations to permit the effective identification of and correction of quality and safety significant deficiencies. Systematic and widespread harassment, intimidation, retaliation and other discrimination has been directed against Comstock QC inspectors and other employees who express safety and quality concerns by Comstock management. Such misconduct discourages the identification and correction of deficiencies in safety related components and systems at the Braidwood Station.

Instances of harassment and intimidation include [at least the following]:

1. [At various times since at least August 1984,] more than twenty five (25) Comstock QC inspectors have complained to the NRC in March 1985 about harassment and intimidation by Comstock supervisors. Such harassment and intimidation has been carried out or participated in by QC Manager Irv DeWald, [Assistant QC Manager Larry Seese, QA Manager Bob Seltman] and QC Supervisor R.M. Sakalac.

Such harassment included widespread pressure to approve deficient work, to sacrifice quality for production and cost considerations and to knowingly violate established quality procedures. Harassment and retaliatory treatment included threats of violence, verbal abuse, termination of employment, transfer to undesirable jobs or work in areas where quality deficiencies could not be noted, assignments to perform burdensome or menial "special projects" and other adverse treatment. Such discriminatory action was taken because of the victim's expression of quality or safety concerns. Former Level II QC inspector John D. Seeders has knowledge of these widespread instances of harassment. By letter of August 17, 1984, Seeders complained to the NRC, Edison and Comstock management regarding instances of harassment directed against him. Subsequently, Mr. Seeders was involuntarily transferred to the position of Engineering Clerk in retaliation for his expression of quality concerns. Such assignment was intended by Comstock to keep Mr. Seeders away from sensitive work areas. Although QC Supervisor R.M.

Sakalac was finally terminated in 1985 for his mistreatment of QC inspectors and other misconduct, the effects of his harassment remain uncorrected [and systematic harassment continues at Comstock to the present]. The existence of widespread harassment impugns the integrity and effectiveness of on-going corrective action programs designed only to address other widespread QA failures at Comstock. [As stated in Mr. Seeder's affidavit, these Comstock QC inspectors are eager to cooperate with the licensing board in identifying and correcting the harassment problems at Comstock, but require board protection from retaliation in order to provide testimony and documentation of their harassment.]

2. Comstock management, including QC Manager Irv DeWald and Corporate QA Manager Bob Marino harassed, discriminated and retaliated against, and ultimately terminated Level III QC Inspector Worley O. Puckett because Mr. Puckett made numerous complaints about safety and quality deficiencies which he identified in the course of his duties at Braidwood.

Mr. Puckett was hired by Comstock in May 1984 in the newly created position of Level III QC Inspector whose duties included conducting a review of Comstock procedures, tests requirements for the more than 50 Level II QC Inspectors, review of the Level II's inspection work, and the resolution of inspection disputes. Mr. Puckett was highly qualified with 20 years' nuclear Navy and nine years' nuclear power experience. See, Resume, Exhibit B. During the course of his employment with Comstock Mr. Puckett was shocked by the widespread deficiencies in procedures, qualifications and workmanship. He identified numerous instances of improper construction procedures, improper qualification of welders, and material traceability deficiencies. He ultimately recommended a complete stop work order for all welding activity to permit effective corrective action. See, Memos of August 10 and August 17, 1984, Exhibits C and D.

Finally, he warned QC Manager Irv DeWald that "we are approaching a complete breakdown in our QC program." August 22, 1984 Memo, Exhibit E. Puckett was subjected to harassment and retaliation because he raised these safety and quality concerns and was terminated on August 27, 1984 by DeWald on the pretext that he should have scored higher than his 86% on a qualification test. He filed a complaint with the U.S. Department of Labor, alleging violation of the employee protection provisions of the Energy

Reorganization Act, 42 USC 5851. Letter, September 5, 1984, Exhibit F. The U.S. Department of Labor Area Director sustained Mr. Puckett's complaint finding unlawful discrimination by Comstock against Puckett and ordered relief. Notes of Decision, November 6, 1984, Exhibit G. Mr. Puckett presented his case at a hearing before an Administrative Law Judge on Comstock's appeal. See, Complainants' Pre-Hearing Exchange, Exhibit H. Comstock settled Mr. Puckett's claim before putting on its case. The terms of settlement are subject to a non-disclosure agreement between Comstock and Mr. Puckett.

1 JUDGE BRENNER: Should we take the
2 disagreements in the order in which they appear or did
3 somebody have a better plan?

4 MR. MILLER: On behalf of the Applicant, Judge
5 Brenner, I would like to recede from one disagreement, and
6 that is the bracketed names that appear in the first
7 paragraph of numbered paragraph 1 on page 3 of the
8 proposed stipulation. I have had further opportunity to
9 review the bases for the contention and find that those
10 individuals are identified in the August 17, 1984 letter,
11 and therefore, Commonwealth Edison has no objection to the
12 inclusion of those two individuals in the contention.

13 JUDGE BRENNER: All right. I guess that's not
14 reflected in the signed copy because that was previously
15 typed?

16 MR. MILLER: Right.

17 JUDGE BRENNER: After we are done here we might
18 ask you to file two things together, the joint stipulation
19 as it was proposed and then another copy reflecting our
20 rulings here.

21 All right. Let's back up, then, and take the other
22 -- remaining disagreements in order; if that's
23 acceptable?

24 On page 3 of the proposed stipulation, everybody
25 agrees that the first line after the first full paragraph

1 can read: "Instances of harassment and intimidation
2 include" -- Intervenor, Ms. Rorem, et al., by that term --
3 Intervenor wants to add at least the following, after
4 "include."

5 I, frankly, don't understand the importance of the
6 disagreement since, as I read the word "include" it means
7 that the listing after that is not limiting.

8 MR. MILLER: Well, I read the word "include"
9 differently with all the changes that have been made. And
10 submit that the words, "at least the following," are
11 inconsistent with this Board's June 21st -- I'm sorry, the
12 April 17th -- I was right the first time -- June 21st
13 order.

14 I have specific reference to footnote 6 on page 12
15 of that order, in which the Board set down certain
16 limitations on Intervenor's proof and set forth certain
17 restrictions in terms of the elements of proof that will
18 be introduced.

19 As I understand the footnote, it restricts the
20 Intervenor to the specific instances which were set forth
21 under each alleged pattern in the contention as it now
22 stands. It is on that basis that we object to the words
23 "at least the following," and, indeed, the same objection
24 applies to the next bracketed phrase that appears at the
25 beginning of numbered paragraph 1 on page 3 of the

1 stipulation.

2 JUDGE BRENNER: So, if I in my own mind read
3 the word "include" to be the word "are," that would be the
4 same meaning you intend?

5 MR. MILLER: Correct. The reason I didn't
6 object to the word "include" is that there are a number of
7 individual instances of alleged harassment and
8 intimidation and I don't know whether the usage of the
9 word "include" is quite proper but I regarded that as not
10 justifying an expansion of the contention beyond the
11 specific instances pleaded.

12 JUDGE BRENNER: All right. I understand. I
13 suggest you would have gotten into an argument as to what
14 the word "include" meant later on in any event, even
15 though we didn't have that bracketed information and it's
16 better to clear that up now rather than later.

17 Mr. Guild?

18 MR. GUILD: Yes. To the extent the Board's
19 June 21st order speaks to this issue it's page 12 -- page
20 13 that speaks to the issue of harassment, not page 12.
21 The footnote on page 12 deals explicitly with the, if I
22 can say, technical, QA issues, the deficiencies that were
23 enumerated in our amended filing. Page 13 establishes the
24 burden that the Board imposes upon Intervenor with
25 respect to our later filing on harassment. The irony, I

1 guess, that best reflects our position, is that the
2 stipulated contention, proposed stipulated harassment
3 contention in almost all particulars except the
4 underlinings and brackets, was proposed on July 12, before
5 we even knew of the existence of the three NRC Staff
6 memoranda that were the supplemental filing of July 15th.

7 We used the word "include" initially because we were
8 aware that there were a large number of other complaints
9 of harassment that had been made, but did not have access
10 to the documentary materials that identified particularly
11 and specified those instances of harassments. Ironically,
12 we learned of those two days later and stated them to the
13 Board.

14 JUDGE BRENNER: Even if you are right, even if
15 213 governs, the second half of the full paragraph, the
16 bottom half of the June 21st, order, page 13 -- you talk
17 about other alleged examples of alleged harassment and
18 intimidation?

19 MR. GUILD: Yes, sir. But I think the
20 reasonable burden the Board did and should impose upon
21 Intervenor was a burden of pleading. And we think we
22 have met that burden of pleading.

23 We think that it's a different context than
24 identifying historic deficiencies in quality assurance
25 that are founded on NRC Staff reports in the public domain

1 that were available to Intervenors, that were analyzed by
2 Intervenors, and that were specifically detailed as the
3 Board directed us to do.

4 By contrast, we are talking about the subject of
5 harassment and intimidation, evidence of which, to be
6 charitable, was hidden from Intervenors by the NRC Staff.
7 We learned of the documentation of at least 24
8 complainants' harassment allegations two days after we did
9 our best to plead this contention on the 21st.

10 So I think, Judge, what I would say is in the
11 context of a harassment claim we have met our basis and
12 specificity obligation. We propose to stipulate to the
13 contention as it is. But with regard to the disputed
14 language, the "include" I or the "at least the following"
15 language, that we are now at the stage, Judge, where
16 subject to the Board's restrictions and the schedule
17 agreement, discovery is available to us with the measure
18 that we proposed of protection for a number of these
19 individuals -- we believe now is the time to offer
20 evidence, and that we propose to do.

21 So, I think that we have established by way of
22 pleading, the incidents that we seek to litigate. Those
23 are a pattern of harassment of quality control inspectors
24 by Comstock management.

25 We have told you all we know with the caveat that

1 some persons are unwilling to come forward without
2 protection from the Board. We believe telling you what we
3 know at this stage meets our pleading obligations.

4 JUDGE BRENNER: While you were talking I was
5 certainly listening and I was also looking at the
6 schedule, when you talked about discovery.

7 Glancing at it quickly, the parties have provided
8 that discovery on QA issues, except -- and we are talking
9 except -- put 82-05 aside -- and with that, except for
10 deposition, you are talking about completion of discovery
11 by September 27th; is that right?

12 MR. GUILD: Yes, your Honor.

13 JUDGE BRENNER: And you already know the
14 Board's definition of end of discovery from our earlier
15 orders.

16 Did you finish, Mr. Guild?

17 MR. GUILD: Yes, September 27th, with the
18 exception of the identification of witnesses and the
19 contemplation that parties would have the opportunity to
20 depose the witnesses identified by their adversary
21 thereafter during the period following September 27th.

22 JUDGE BRENNER: September 27th is the deadline
23 for identifying witnesses.

24 MR. GUILD: Correct.

25 JUDGE BRENNER: And there is a further period

1 for depositions.

2 MR. GUILD: Correct. Through the 15th of
3 October.

4 JUDGE BRENNER: Staff?

5 MR. TREBY: Yes, the Staff had understood the
6 rule in this case with regard to pleading contentions to
7 require a high level of specificity, due to the matters
8 which the Board has discussed in its memorandums of April
9 17, '85 and June 21, '85; as succinctly set out on
10 footnote 6 of page 12. And we understood the rule to mean
11 that contentions must set out the specific instances to be
12 set forth. And, so, our objection to "including at least
13 the following" is that it seems to be open-ended; that it
14 is not listing the specific instances, it is listing three
15 instances and with some indication that perhaps there will
16 be more.

17 We think that the rule of this case applied also to
18 any contentions with regard to harassment and
19 intimidation, because, if you look at page 13 of the June
20 21 order, it sets forth that -- first that these other
21 retaliations were only vaguely alluded to. And then the
22 next sentence says: "All other such instances to be
23 included must be set forth by Intervenorors with basis and
24 specificity. "

25 We understood that to mean, then, that whatever new

1 contention was going to be set forth on this matter would
2 be listing each of the instances that Intervenors wished
3 to raise, and so that we would be put on notice as to what
4 it was that was being litigated.

5 I guess I also read the word "include" to mean the
6 universe of the three instances which are set forth
7 afterwards.

8 I agree that's not a precise definition of the word
9 "include," but it didn't appear that it needed to be
10 disputed any more than it was since the words, "at least
11 the following" had been bracketed immediately thereafter.

12 JUDGE BRENNER: I'll submit to all of you that
13 the word "include" is one that lawyers have been fighting
14 over for ages and will continue to do so. And while it's
15 a good word to end up with a signed document, it doesn't
16 have continuing vitality in all cases.

17 MR. MILLER: Ordinarily it's followed by the
18 words "but not limited to."

19 JUDGE BRENNER: That's true.

20 Mr. Treby, assuming that whoever wrote the words on
21 page 12 and 13, back on June 21st, were to reject
22 Mr. Guild's argument that footnote 6 does not apply to
23 harassment, which is a somewhat disingenuous argument,
24 given the argument in footnote 6, and in any event, saying
25 Mr. Guild's arguments are refuted by the words on page 13,

1 which do relate to harassment, nevertheless, what if I
2 were to reform slightly Mr. Guild's argument and say that
3 that was fine back on June 21st, but notwithstanding the
4 best efforts at unearthing more particular information,
5 including the deposition of a Staff -- of Staff members
6 which -- forgive me, I forget the exact date, the first --
7 May 21st?

8 MR. GUILD: May 20th.

9 JUDGE PRENNER: -- Mr. Warnick, particularly,
10 there were certainly questions asked. And although the
11 occasion of these Comstock quality control personnel
12 coming to the Staff was discussed -- let me put it this
13 way, the deponent was certainly not very forthcoming with
14 details as to the instances. And, based on the June 15th
15 supplement filed by counsel for Intervenor, the documents
16 did not become known to them until July 14th.

17 Now that they have those documents, it shows that
18 they certainly had the outlines of the problem and these
19 are more specifics, and it's the kind of issue that, until
20 discovery is permitted on it, it is an unfair burden to
21 expect them to have the specifics, whereas the other
22 parties may already have some further specifics.

23 MR. TREBY: Judge Brenner, I would agree with
24 you that there appears to have been some confusion in Mr.
25 Warnick's deposition. I think what occurred is that we

1 were talking about Mr. Seeders' allegation. Then he
2 seemed to recall something about 24, but he wasn't sure.
3 Then we looked at the file which was identified in the
4 inspection report and that only related to Mr. Seeders.
5 And perhaps -- more than perhaps, we should have, perhaps,
6 conducted a further search to see what the 25 was that
7 Mr. Warnick had vaguely remembered. And it is for that
8 reason that the Staff is willing to enter into this
9 stipulation which does include the situation regarding the
10 25 people which apparently Mr. Warnick had confused with
11 Mr. Seeders' allegation. That is why we are prepared to
12 enter into this stipulation.

13 JUDGE BRENNER: It's unfortunate that he had
14 such a problem with his memory on a very detailed memo
15 that he received only two months before on an instance
16 that did not appear to me to be an ordinary course of
17 business-type memo of the nature that one would easily
18 forget. I'll leave the observation at that.

19 MR. TREBY: I would note that Mr. Warnick is a
20 branch chief who is responsible for numerous plants,
21 received numerous memoranda --

22 JUDGE BRENNER: Like this one?

23 MR. TREBY: Excuse me?

24 JUDGE BRENNER: Like this one?

25 MR. TREBY: Perhaps. I'm sure he receives

1 numerous memoranda talking about different plants,
2 proceedings talking about different plants --

3 JUDGE BRENNER: Where his resident inspector
4 proposed that work should be stopped immediately?

5 MR. TREBY: That is not an uncommon
6 recommendation.

7 JUDGE BRENNER: I sit corrected.

8 And there was some confusion in what Mr. Warnick
9 said about no others, to be taken to mean no others beyond
10 the 124 that he already discussed.

11 So I think Mr. Guild exaggerated the situation in
12 his cover pleading, to say the least. But I'm not
13 criticizing Mr. Warnick. My focus is, given the nature of
14 this issue, is it not something that we now have enough on
15 to permit Intervenors to have full discovery?
16 Notwithstanding what we thought their situation would be
17 back on June 21st?

18 MR. TREBY: I think full discovery is a
19 different question than what we were originally
20 discussing. We were discussing whether or not the
21 language of this proposed contention should be limited to
22 the three specific instances set forth in the stipulation,
23 which does include this question of the 25 Comstock
24 people.

25 If you are now talking about full discovery, that's

1 a different question than whether or not the words "at
2 least the following" should or should not be included in
3 the stipulation.

4 JUDGE BRENNER: Well, the reason I thought it
5 was at least a related subject is that the consequence of
6 what we rule the contention to be will cover the scope of
7 permissible discovery, with an opportunity thereafter for
8 getting the specifics of the contention down.

9 MR. TREBY: Are you saying that the question
10 is: Should discovery be limited to the three situations
11 that are set forth here or should discovery be open-ended
12 so that the Intervenors can explore whatever they wish to
13 explore?

14 JUDGE BRENNER: No. Not whatever they have
15 wish to explore, Mr. Treby.

16 MR. TREBY: On the subject of harassment and
17 intimidation.

18 JUDGE BRENNER: Of Comstock quality control
19 personnel; yes. That's what I'm asking you about.

20 MR. TREBY: Normally discovery is limited to
21 the scope of the admitted contention, which would --

22 JUDGE BRENNER: That's why we are trying to
23 decide what it is.

24 MR. TREBY: They should be able to explore
25 whether there are or are not other instances of harassment

1 that have been alleged against Comstock?

2 JUDGE BRENNER: They say they have other
3 instances and have talked about the nature of their claim
4 for those other instances but that they don't have
5 specifics yet.

6 MR. TREBY: I would think that if they know of
7 others they should identify to whatever extent they can,
8 what these others are rather than just leaving a vague:
9 We know of some but we are not going to tell you of what
10 they are.

11 JUDGE BRENNER: Does the Staff know of any
12 others?

13 MR. TREBY: I personally have not explored the
14 allegation folders at the region but I will look into that
15 matter.

16 JUDGE BRENNER: Is there anybody here you can
17 ask?

18 MR. TREBY: I don't believe so. I think that's
19 a matter that we would need to go back to the offices of
20 region 3 and look into it. But, to the extent that there
21 may be other allegations --

22 JUDGE BRENNER: Of harassment and intimidation
23 of Comstock quality control personnel.

24 MR. TREBY: Right. To the extent there may be
25 such, I would include that in the questions asked of

1 Mr. Warnick and we would advise the parties of any such
2 allegations that we would find.

3 JUDGE BRENNER: Mr. Guild, can you point me to
4 where in your proposed contention or the amendments or the
5 documents attached, if anywhere there, that you have
6 allegations of other instances of harassment and
7 intimidation of Comstock quality control personnel?

8 MR. GUILD: I wasn't clear. That was
9 Mr. Treby's reference --

10 JUDGE BRENNER: No. That was mine.

11 MR. GUILD: Well --

12 JUDGE BRENNER: Do you have any others?

13 MR. GUILD: I'm trying to grapple with what
14 your question is focused on.

15 JUDGE BRENNER: The parties have said you
16 haven't even alleged any others. I'm asking --

17 MR. GUILD: Let's start with this, Judge. We
18 say in our filing of the 12th, before we even knew of the
19 March and April memos that were supplemented, that the "at
20 least 25," and we recite some general facts about the
21 nature and fashion of the intimidation.

22 We then get the memos two days later that reflect
23 that number 24 was included at least in one of those. I
24 can't line up the number with the number to be able to
25 tell you whether or not there's an identity of harassment

1 complaints there.

2 So, when we say "others," there's some included in
3 the numbering that we allege --

4 JUDGE BRENNER: You didn't answer my
5 question. Tell me where in your arguments there are
6 allegations of harassment and intimidation which you say
7 have a basis for saying relate to something other than the
8 memos that you thereafter found which relate to the day in
9 March.

10 MR. GUILD: I'll start with the beginning,
11 then.

12 Mr. Warnick says he got Mr. Seeders' letter in
13 August of '84. Our resident went to see Mr. Seeders. He
14 brought with him four others and said he could bring
15 numerous other people who would corroborate his concerns
16 about harassment and intimidation. I'm paraphrasing
17 Mr. Warnick's deposition.

18 But that afternoon or the next day --

19 JUDGE BRENNER: So then you went to talk to
20 Mr. Seeder and said, "Who is your proposed witness," to
21 see who the others were and what was involved?

22 MR. GUILD: That's correct.

23 JUDGE BRENNER: Is there anything else that you
24 have besides these instances for which you have the
25 specifics?

1 MR. GUILD: Maybe we are not just
2 communicating, Judge. Mr. Seeders informs us of others
3 who came with him to speak to the NRC back in fall of
4 '84.

5 JUDGE BRENNER: Where is this in the
6 affidavit?

7 MR. GUILD: If I could have a moment.

8 JUDGE BRENNER: Certainly.

9 MR. GUILD: In the initial pleading, Judge; the
10 July 12th pleading. The language of the proposed
11 contention was as follows:

12 "More than 25 Comstock QC --"

13 JUDGE BRENNER: I'm sorry, what page?

14 MR. GUILD: This is the July 12 filing, page 3,
15 the single-spaced text, paragraph numbered 1:

16 "More than 25 Comstock QC inspectors complained to
17 the NRC in September 1984 about harassment and
18 intimidation."

19 JUDGE BRENNER: Where is the underlying basis
20 for that?

21 MR. GUILD: The basis for that was
22 Mr. Warnick's deposition, the explanation that some
23 number, 30 I think is the number Mr. Warnick used -- came
24 and corroborated the complaints by the initial five,
25 including Mr. Seeders. And Mr. Seeders' statement which

1 --

2 JUDGE BRENNER: I thought Mr. Warnick was
3 talking about March?

4 MR. GUILD: That, sir, is exactly the point. I
5 understood him to be talking about those who came from
6 Mr. Seeders, and now we hear from Mr. Treby the apparent
7 confusion that he had that we were talking about from
8 March.

9 When we filed the pleading on the harassment
10 contention --

11 JUDGE BRENNER: Let me back up. Mr. Seeders is
12 your witness?

13 MR. GUILD: Yes.

14 JUDGE BRENNER: He came with four others.

15 MR. GUILD: So Mr. Seeders said.

16 JUDGE BRENNER: It's your witness. What are
17 the specific allegations of harassment that he told you
18 about besides what you have in the contention? It's very
19 simple.

20 MR. GUILD: You have what's in the contention
21 and besides that I can only tell you as follows:
22 Mr. Seeders tells us in sum, there are names of persons
23 who are those who went with him. We have contacted a
24 number of those people and those are the people whom we
25 state and he states are unwilling to have their names

1 identified.

2 JUDGE BRENNER: You are getting ahead. I don't
3 need to know the names of persons to know what your
4 specific allegation is of harassment.

5 MR. GUILD: Then I have to say this, Judge:
6 Names are identifying information --

7 JUDGE BRENNER: I'm not asking you for the
8 names.

9 MR. GUILD: Identifying information? I can
10 only tell you that there are those among that group,
11 Judge, who I'm informed have specific allegations of
12 harassment. They are unwilling to either provide those
13 details to me or to this Board in this proceeding, absent
14 some protection pursuant to a protective order which we
15 seek.

16 So, I'm unable to provide you further details.

17 MR. CASSEL: Could we have just a moment,
18 Judge?

19 JUDGE BRENNER: I don't understand. Your own
20 witness, Mr. Seeders, couldn't give you the specific
21 instances that he says he knows about because all he knows
22 is that somebody else told him there are specific
23 instances? Is that it?

24 MR. GUILD: No, sir. No, sir. He has direct
25 knowledge, he tells me, of other instances beyond those

1 that occurred directly to him.

2 JUDGE BRENNER: What are they?

3 MR. GUILD: Well, he's unable to tell me. And
4 he's unable to tell me because he doesn't have the consent
5 of those involved to divulge their names and subject them
6 to their feared reprisals.

7 JUDGE BRENNER: I don't want their names.

8 MR. GUILD: Or identifying information, Judge.
9 Because I won't be in a position --

10 JUDGE BRENNER: You don't know who they are
11 either, yourself?

12 MR. GUILD: I won't be in a position of being
13 responsible for extracting what may be information from an
14 individual who tells me he has fear of reprisal. My
15 obligation is to say there's a provision I'm aware of
16 which is available which is a protective order, which will
17 allow you to come forward with some measure of protection,
18 not a guarantee, and I will seek that of this Board with
19 your authorizations and I have done so. And that's at
20 this stage, your Honor, the best I can do.

21 JUDGE BRENNER: Of your own knowledge you have
22 no other specifics besides what you've noted in the
23 contention?

24 MR. GUILD: I know of other instances but I'm
25 not prepared to divulge names or other information.

1 JUDGE BRENNER: Mr. Guild, you are being
2 disingenuous.

3 MR. GUILD: I'm trying not to, Judge.

4 JUDGE BRENNER: I told you five times I do not
5 want the names. As a lawyer there's no way you can phrase
6 things more specifically than saying there are other things
7 out there but unable to be more particular without giving
8 specific information?

9 MR. GUILD: I'm sorry, Judge. I'm trying to
10 tread lightly in what I know to be a very delicate area
11 that does not subject, by my misstep, individuals to what
12 they tell me is a fear of reprisals. They tell me they
13 don't want their name used and give me an outline of
14 specific problems --

15 JUDGE BRENNER: That's about the sixth time you
16 did that and I told you I'm not interested in the names.
17 Get to the point.

18 MR. GUILD: I'm sorry I'm not being responsive
19 in your view, but the problem I face is presenting
20 information which I have to conclude on the basis of my
21 limited knowledge would not be identifying of that
22 individual beyond that individual's name.

23 JUDGE BRENNER: When would you be prepared in
24 preparation of the contention that you would like admitted
25 to set forth what the allegations are so that it could be

1 meaningfully litigated and so that other parties could
2 have discovery that they need?

3 MR. GUILD: All right, sir. I think that's the
4 appropriate question. And that point it would seem to me,
5 Judge, would be with a protective order that allowed for
6 that individual to say I desire protection or I don't
7 desire protection. If I don't desire protection then
8 there's no need for me to shield that personal's identity
9 or identifying information. It should be available in
10 discovery.

11 JUDGE BRENNER: If this is so important to you
12 why, then, given the fact that the contention was already
13 late in the file, at least -- no later than very shortly
14 after our July 21st order, why did you not come in and ask
15 for a protective order then rather than coming in another
16 very critical month, telling us that's what you needed,
17 when we asked for the details back on July 21st?

18 MR. GUILD: Frankly, we thought much of this
19 information would reside with the NRC Staff and we'd be
20 able to obtain it in the course of the discovery that we
21 sought and we found now that even the questions that we
22 asked back in May, which we thought were direct and as
23 narrowly framed as necessary to elicit the information,
24 did not elicit information that was in fact not known by
25 the NRC. We do the best we can, is all I can say, Judge.

1 JUDGE BRENNER: I suggest you sat back and
2 waited after an already late contention before asking for
3 this type of protective order.

4 MR. GUILD: May I have a moment, sir?

5 (Discussion off the record.)

6 JUDGE BRENNER: Let me see if Mr. Guild wanted
7 to add something and then I'll go to you, Mr. Miller.

8 MR. TREBY: I had something to add, your Honor,
9 too. When it's my turn.

10 MR. GUILD: On page 3 of the joint stipulation,
11 the second paragraph under number 1, "such harassment
12 included widespread pressure --" et cetera.

13 JUDGE BRENNER: I'm sorry? Okay. I have it
14 now.

15 MR. GUILD: The attempt there is to enumerate
16 the instances of harassment of which we are aware,
17 including instances experienced by those other than
18 Mr. Seeders and Mr. Puckett, which are stated in as
19 precise terms as I felt I was capable of stating without
20 running the risk that I just spoke to, and that was
21 identifying the individual by name or by identifying
22 information.

23 For example, I'm informed that one or more of the
24 individuals who spoke with the NRC in the end of March was
25 subsequently terminated.

1 JUDGE BRENNER: That you are covered on by
2 everybody's agreement of the contention.

3 MR. GUILD: How is that, sir?

4 JUDGE BRENNER: Because everybody agrees that
5 the inspectors that have complained in March '85, these
6 complaints are part of the --

7 MR. GUILD: But I'm speaking of an act of
8 discrimination that took place after the March 29th --

9 JUDGE BRENNER: Certainly, but anything arising
10 out of that act would be covered.

11 MR. GUILD: That's an example. I'm trying to
12 refer you to the instance --

13 JUDGE BRENNER: That's not pertinent to the
14 issue.

15 MR. GUILD: I think it is. It's an instance of
16 harassment --

17 JUDGE BRENNER: It's not pertinent to the issue
18 of how we should word the contention; whether it should
19 include "other unspecified matters beyond March '85" and
20 Mr. Seeders --

21 MR. GUILD: Two narrow points, then. In my
22 view we argue that, in that second full paragraph, the
23 enumerated examples of harassment include the specifics
24 without identifying names or information known to us,
25 beyond Seeders and Puckett, because when we filed the

1 initial contention those are the only two that we had
2 specific identifying information about whose names we
3 could disclose. We then got the NRC memos and you have
4 those. So they are included. And we would submit that
5 through the process of discovery with the protective order
6 available, identifying information and names would be made
7 available to the adversary parties so that they could
8 prepare to respond to those claims.

9 JUDGE BRENNER: Who would you make the
10 identifying information available to, so that they could
11 litigate the claims?

12 MR. GUILD: Well, the outlines of a protective
13 order that we would urge is appropriate would include the
14 limitation on dissemination of identifying information and
15 names to those who are signatories to affidavits of
16 confidentiality. They would hold in confidence the
17 information they received.

18 JUDGE BRENNER: I take it your main problem is
19 potential consultants and witnesses of the Applicant;
20 rather than Staff?

21 MR. GUILD: Applicant and NRC Staff as well,
22 sir; and that there be a report made to the Board of who
23 are the signatories to those affidavits. They'd send you
24 a copy of the affidavits so there would be a record of who
25 received identifying information on a need-to-know basis

1 to pursue discovery.

2 JUDGE BRENNER: As you know from the other
3 cases you reference there's a balance between people who
4 have to know in order to meaningfully litigate a matter.
5 Who do you think it would be limited to?

6 Presumably the argument would be that persons
7 familiar with the incidents are those that would have to
8 know and these are the very persons you apparently say you
9 cannot release the names of because of concern about those
10 persons knowing.

11 MR. GUILD: I think that's a very appropriate
12 observation, Judge. And I think that was certainly a
13 first piece of information if there were a protective
14 order issued, conveyed to those to benefit from it. For
15 the other side to prepare their case it may be necessary
16 that they disclose subject to this protective order,
17 identifying information to -- let's take for example
18 Mr. Dewald, quality control officer for Comstock, who's
19 identified as a perpetrator.

20 JUDGE BRENNER: You'd have to tell anybody who
21 you say performed the harassment necessarily in order to
22 prepare their position on it.

23 MR. GUILD: Given that position the best
24 protection earlier is the knowledge that this Board on
25 this proceeding would know who had the information, would

1 be in a position to protect witnesses and protect the
2 integrity of the process. No guarantee, but some level of
3 control of the identifying information. It's not a
4 perfect world and we recognize that. We can't make
5 guarantees but we can do, I think, the best we can to
6 protect these individuals.

7 JUDGE BRENNER: It seems to me the only persons
8 whose knowledge of the identifying information would
9 concern you, the potential witnesses, would be the very
10 ones that you just agreed the names would have to be
11 disclosed to anyway.

12 Look, we went through this in Catawba based on what
13 I saw on the record there and as it turned out everybody
14 waived confidentiality once they understood who would have
15 to have the names anyway; isn't that right?

16 MR. GUILD: No, sir, there was at least one
17 individual who ultimately waived confidentiality, but as I
18 recall there were at least two or three of the so-called
19 in camera witnesses who ultimately insisted on
20 confidentiality and maintained a confidential status.
21 There were a large number of other witnesses who were
22 heard in camera, in a subsequent part of that proceeding.

23 But, yes, it's true that at the point of hearing, it
24 could occur to an individual who subsequently was
25 terminated or left the company, found other employment,

1 whose need for protection based on his own judgment was no
2 longer compelling, that he came forward to the Board and
3 said: I'm prepared to go public.

4 JUDGE BRENNER: I submit to you that
5 individuals may have realized and I'll put the question to
6 you: Don't you think there's no higher protection than
7 the fact that these witnesses have come forward for a
8 company than to take retaliatory action after being in the
9 fish bowl of a hearing? That these witnesses have
10 testified, knowing that any later action would be viewed
11 with suspicion by all the authorities?

12 MR. GUILD: I think that's a very important
13 consideration, Judge. And that's certainly something I
14 said to these individuals in the circumstances, but I
15 think it's a judgment for the individual to make.

16 There are those who genuinely feel that the
17 preferred protection is to remain anonymous, and if they
18 have good cause for that, sir, that should be their
19 choice.

20 JUDGE BRENNER: But they are not going to be
21 able to remain anonymous and still give testimony in the
22 hearing.

23 MR. GUILD: They can have some measure of
24 protection. They can give their testimony in camera and
25 have their concerns pursued subject to a protective

1 order.

2 JUDGE BRENNER: Mr. Miller, before you beat the
3 table to death --

4 MR. MILLER: I'm sorry. I didn't mean to
5 appear impatient.

6 I think it's worthwhile to step back just a little
7 bit and understand -- I'm sure the Board does -- that we
8 are really talking about a contention, a pleading, and the
9 Board's admonitions with respect to the basis and
10 specificity for that pleading.

11 Mr. Guild's argument has kind of ranged over a
12 variety of subjects, including the protective order; in my
13 judgment in an effort to shore up an otherwise
14 unacceptable and otherwise -- an otherwise unacceptable
15 pleading.

16 If one looks at the documents which support the
17 contention, in its various forms, it is apparent that the
18 Intervenors recognized that they bore some burden, in
19 accordance with the Board's June 21st order, to provide
20 bases and specificity.

21 If one looks closely at Mr. Seeders' affidavit,
22 supplied in connection with the July 12 filing, one does
23 not find any description of any other instances of
24 harassment and intimidation that he witnessed. All one
25 finds is a description of his own experiences and a plea

1 on behalf of unidentified individuals for protection so
2 that they might come forward and testify.

3 JUDGE BRENNER: Actually he doesn't even refer
4 to his own instance, but we've taken that as established
5 by the earlier letter; at least as an allegation.

6 MR. MILLER: It seems to me that then we move
7 from the obvious deficiency in Seeders' affidavit as
8 providing a specificity, a basis, as to the issue of
9 whether there is some fear of retaliation that is an
10 excuse for the deficiency in the pleading.

11 Once again, the pleading itself seems to me to be
12 deficient. There should have been no inhibition on an
13 individual supplying an affidavit describing nothing more
14 than that he was a Comstock quality control inspector;
15 that he experienced instances which could be characterized
16 as harassment and intimidation; and stating that he is
17 unwilling to provide further specificity which would lead
18 to his identification without an appropriate protection
19 from this Board.

20 Any such affidavit is not there.

21 JUDGE BRENNER: You mean such an affidavit
22 which also, of course, would not disclose his name?

23 MR. MILLER: Correct. Of course, I assume it
24 could be executed in the copies to the Board and remain
25 anonymous to the rest of us.

1 In fact, if one looks at the documents that have
2 been submitted in support of the contention, one finds
3 that there really is no basis other than the vague and
4 unsubstantiated assertions of Mr. Seeders and the
5 representations of counsel, regarding the need for
6 anonymity.

7 The contemporaneous NRC memoranda of the March 25th
8 incident are to the contrary, where individuals were
9 offered anonymity, at least twice, I believe, according to
10 supporting papers, and the individuals who appeared
11 declined.

12 This Board is thus left with the situation in which
13 the proponent of this protective order has utterly failed
14 to supply any support for the entry of such an order and
15 to the extent that it is the -- that the entry of such an
16 order excuses the inability to provide additional
17 instances of harassment and intimidation, I believe that
18 the contention is also deficient.

19 JUDGE BRENNER: Have you completed?

20 MR. MILLER: Yes, I did.

21 JUDGE BRENNER: I'll ask the same question I
22 asked the Staff. Does Commonwealth Edison or its
23 subcontractors have any other instances of specific
24 allegations of harassment and intimidation of Comstock
25 quality control personnel?

1 MR. MILLER: Let me consult for one second,
2 please.

3 (Discussion off the record.)

4 MR. MILLER: I don't want to represent to the
5 Board that I have complete information --

6 JUDGE BRENNER: I would have accepted an "I
7 don't know."

8 MR. MILLER: I can do a little better than that
9 because the Braidwood project manager and assistant
10 manager of quality assurance are here. Based on their
11 recollection, subject to looking at the files, they do not
12 believe that the company is aware of other instances of
13 alleged harassment and intimidation of Comstock quality
14 control inspectors. But -- and "I don't know" is probably
15 a better answer, because there are files that could be
16 checked.

17 JUDGE BRENNER: You don't know and you at least
18 asked somebody here?

19 MR. MILLER: Yes.

20 MR. GUILD: Judge, may I? I wanted to direct
21 the Board's attention --

22 JUDGE BRENNER: Mr. Treby wanted a turn as I
23 recall, but go ahead if it's quick.

24 MR. GUILD: Yes. Page 4 of the April 5th
25 memorandum that is submitted in an expurgated version for

1 the record, an unexpurgated version to the Board, the top
2 paragraph indicates an individual who specifically recites
3 an act of retaliation before going to the NRC. And it's
4 --

5 JUDGE BRENNER: Which memorandum?

6 MR. GUILD: April 5th, page 4, Judge.

7 JUDGE BRENNER: Yes, I see it.

8 MR. GUILD: He recently visited the NRC
9 office. The following day he was transferred without an
10 explanation.

11 JUDGE BRENNER: That's part of the contention
12 that everybody agrees to.

13 MR. GUILD: Exactly. It seems to me that's a
14 specific factual basis for this Board doing more than
15 simply taking the representations of counsel. It's
16 information given to the NRC Staff that an individual has
17 been retaliated against explicitly for going to -- by his
18 belief -- for going to the NRC.

19 JUDGE BRENNER: In the first place, I never
20 take representations of counsel permanently on a material
21 point. I was asking only for present purposes.

22 Number two, that's not inconsistent with the
23 representation. I was asking about anything else besides
24 that set forth in the documents that we have so far with
25 the contention.

1 MR. GUILD: I was addressing another point,
2 Judge, and that was the basis for this protective order
3 that we seek. I heard counsel for Applicant saying it's
4 nothing but representations of counsel that's basis for
5 this and I point to a specific assertion in a NRC document
6 that I would believe forms a factual basis for the need
7 for protection.

8 MR. MILLER: Excuse me, but that is found at
9 page 4 of a document, and on page 22 of the document,
10 presumably this allegor is one of the persons who asserted
11 that none of the allegors requested confidentiality and
12 each agreed his identity could be used if necessary.

13 MR. GUILD: Which --

14 JUDGE BRENNER: Mr. Guild, during the telephone
15 chat I had with Mr. Cassel I asked him, when he called to
16 explain this filing -- I asked him to try to get to the
17 bottom, from the point of view of your client, as to
18 whether or not the persons listed in this memo have
19 requested confidential treatment because the memo says
20 they haven't. I assume the memo is in the public files
21 somewhere in the NRC, since they have not requested
22 confidentiality.

23 MR. GUILD: Public files, not in the sense it
24 was available to us, your Honor. And we are informed that
25 it was not circulated to Comstock or Edison management;

1 that the allegeders were given copies.

2 JUDGE BRENNER: Is it requested
3 confidentiality?

4 MR. GUILD: Some members have informed us that
5 they requested confidentiality. The individual referred
6 to on page 4 obviously needed it because his going to the
7 NRC, at least in his mind, was the basis for him being
8 transferred as a retaliatory measure.

9 JUDGE BRENNER: They have changed their mind as
10 to the desire to confidentiality or the reference here is
11 incorrect?

12 MR. GUILD: I can't speak to that. I don't
13 know whether it's a change of mind or what the
14 circumstances were of the offer of confidentiality -- I'm
15 informed by the resident inspector over the luncheon
16 recess that these memos that identify these individuals
17 with these allegations were not disclosed to Comstock and
18 Edison management so that there has been at least some
19 protection given to them, de facto, whether they formally
20 requested confidentiality or no. That was in part the
21 reason, out of caution, why we did not circulate an
22 unexpurgated version.

23 JUDGE BRENNER: The NRC called Commonwealth up,
24 after these individuals said they didn't want
25 confidentiality, and they said: Look, these are the

1 problems you have.

2 MR. GUILD: Fine.

3 JUDGE BRENNER: Based on your definition of
4 identifying information you know darned well that they got
5 identifying information in the course of that conference;
6 telephone conference.

7 MR. GUILD: I don't know that, Judge. Perhaps
8 so, but I would hope not. You've got 25 inspectors who
9 are raising concerns. You've got 100 inspectors on your
10 job. Perhaps based on the general discussion of the types
11 of concerns you can isolate it to some. But I assume from
12 what I'm told that there was no linkage of specific
13 allegations with specific names and I think that's some
14 measure of protection. I'm glad he did that.

15 JUDGE BRENNER: Mr. Treby?

16 MR. TREBY: Yes. I have at least three points
17 I wish to make.

18 Number one, I want to reiterate our commitment that
19 we will go back, look at our files and see if there are
20 any allegations of harassment and intimidation. And,
21 subject to any --

22 JUDGE BRENNER: With respect to Comstock
23 personnel?

24 MR. TREBY: Right. With respect to Comstock
25 and with respect to any problems relating to

1 confidentiality and ongoing inspections, we will at least
2 advise the Board and parties if we have any further ones
3 in our files. And, if we can overcome the two problems I
4 mentioned with regard to confidentiality and ongoing
5 investigations, perhaps we can give more information.

6 I would like to observe, though, notwithstanding our
7 commitment which we intend to fulfill, that I'm disturbed
8 that this appears to be a bootstrap operation by the
9 Intervenor.

10 In order to have standing in a NRC proceeding, and
11 to be an Intervenor, there should be an interest that is
12 being affected that you are complaining about.

13 JUDGE BRENNER: That is an interest. Don't
14 spend too much time on that.

15 MR. TREBY: I would like to at least get on the
16 record my view that if they have an interest to the effect
17 that they have some people who have come to them and who
18 have concerns about harassment and intimidation they could
19 have brought those forth. What they appear to be doing is
20 going to the NRC, asking the NRC for all the information
21 the NRC has, and then saying: These are examples of
22 harassment and intimidation and these are the things we
23 want to litigate. I'm not sure that that qualifies as an
24 interest of theirs to litigate.

25 Having said that, I would like to now go on --

1 JUDGE BRENNER: I think what you said relates
2 more to specificity than interest. Their interest is in
3 Comstock quality control inspector A's job. Their
4 interest is because inspector A feared for his job he just
5 signed off on documents without making sure the work was
6 done right. So their interest is in the safety of the
7 plant resulting from that allegation. That's their
8 cognizable interest.

9 MR. TREBY: With regard to harassment and
10 intimidation?

11 JUDGE BRENNER: Yes.

12 MR. TREBY: I would like to address the subject
13 of -- since we keep addressing the question of this
14 protective order, and being anonymous. I think there are
15 lots of practical problems with this blanket protective
16 order concept.

17 JUDGE BRENNER: There sure are.

18 MR. TREBY: The concept that we will allow
19 people who sign some sort of agreement of confidentiality
20 to know this information ends up -- because my
21 understanding of what happened in Catawba was that there
22 were well over 100 people who ended up signing these
23 statements of confidentiality -- in order for the
24 Applicant to respond intelligently to the matter before
25 it, it is going to have to go back and talk to a number of

1 its employees. For the Staff to conduct business.

2 We end up with, in my mind the silly situation of
3 having secretaries sign these statements of
4 confidentiality because they can't type the documents
5 because it discloses names. We have filing clerks --

6 JUDGE BRENNER: The alternative to that is also
7 unacceptable.

8 MR. TREBY: Et cetera -- well in Catawba it
9 happened. In fact everybody including the executive legal
10 director had to sign one of these documents because he was
11 involved in the review chain and he might learn a name.

12 JUDGE BRENNER: Have you confirmed whether or
13 not the people listed in the memo as not having requested
14 confidentiality in fact did not seek confidentiality?

15 MR. TREBY: Yes. I have inquired of the
16 inspector and other NRC people and they have all indicated
17 to me that to the best of their knowledge, nobody sought
18 confidentiality.

19 JUDGE BRENNER: All right. But I meant --
20 okay. That answered the question as I asked it.

21 MR. TREBY: I have not gone back and asked each
22 of the named individuals: Did you ask for confidentiality
23 or not?

24 JUDGE BRENNER: It might be more to the point
25 somebody asking them, not necessarily you personally: Do

1 you, upon consideration of the matter, do you now want
2 confidentiality?

3 MR. TREBY: My understanding is that a blanket
4 statement was made at the time that all these people
5 congregated, asking them: Do you request
6 confidentiality? And the response was, "no."

7 And, that during a conference call with the region
8 when the people were setting forth their various concerns,
9 they provided their name, et cetera, without any
10 indication that they requested confidentiality.

11 I might add that it's my understanding of the
12 current operative Commission policy on the question of
13 confidentiality that it no longer is implied, nor are OI
14 investigators directed to inquire whether somebody wants
15 confidentiality or not.

16 The procedure is that if somebody wishes it he has
17 to seek it; that is, ask for it.

18 JUDGE BRENNER: That's not necessarily guiding
19 as applied to the particular circumstances in a particular
20 case. Do you think it's unreasonable for the NRC to go
21 back and ask these people whether they now want
22 confidentiality, to the extent it can be given beyond the
23 previous dissemination when it was believed they didn't
24 want confidentiality?

25 MR. TREBY: Well, it seems to me that it's

1 somewhat of a burden to go back and inquire of each of
2 these people whether or not they wish to have
3 confidentiality.

4 JUDGE BRENNER: "Confidentiality" in quotes
5 because there has to be a full representation about the
6 limitations on that, even.

7 MR. TREBY: It seems to me if they are to be
8 Intervenor's witnesses the burden has to be on Intervenor's
9 to come forward and say that we have checked and Mr. X or
10 Ms. Y has indicated that they desire confidentiality. At
11 this point it's our understanding that no one sought it.

12 (Discussion off the record.)

13 JUDGE BRENNER: We have had a very lengthy
14 discussion over what seemed to be a simple few phrases in
15 dispute, and the reason for that is, I think the parties
16 recognized, in any event the Court perceived, that that
17 deceptively simple-appearing disagreement really underlies
18 more extensive problems that could arise later.

19 We are going to permit the Intervenor's at this time
20 the broader language; that is, "include at least the
21 following" and the broader language in that item 1, "at
22 various times since at least August 1984."

23 We have done that notwithstanding the fact,
24 Mr. Guild, that you, and I assume other counsel for Rorem,
25 have not been diligent in what should have been done; I'm

1 sorry to observe that on the record but I do in fairness
2 to the other parties in this proceeding. To the extent
3 you wanted some further protection before coming up with
4 specifics you had ample prior opportunity to do that and
5 seek that further protection and still come forward with
6 -- even without the protection, more specifics than you
7 have so far. And frankly, I think you are still just
8 fishing for other information as opposed to having it.

9 However, we balance that by the fact that by its
10 nature, this type of issue is not an easy one to grasp, in
11 the sense that you can't simply go through inspection
12 reports and papers and documents on it as you can on other
13 quality assurance, quality control issues.

14 With the addition of the July 12th supplement, we
15 see enough of broad source of allegations; that is, we are
16 not just talking about one or two persons alleging matters
17 now, we have a large number. And given that large number
18 that's enough for us to infer the possibility of a
19 widespread pattern of harassment and intimidation of
20 Comstock quality control personnel.

21 Given that, we are going to allow the Intervenor to
22 explore whether there are more specifics that make up that
23 same pattern. And, again, it's the importance of the
24 issue that governs, given the specifics Intervenor have
25 already given us on the issue, which specifics the other

1 parties, at least, are willing to agree to. But even if
2 you hadn't, they would have been admitted --

3 MR. CASSEL: Judge, since you mentioned other
4 intervenors --

5 JUDGE BRENNER: Let me finish.

6 MR. CASSEL: Certainly. I didn't mean to
7 interrupt.

8 JUDGE BRENNER: The reason I added that aside
9 is because I didn't want you to believe that your
10 agreement, the part that you had agreed to, had
11 bootstrapped you out of the situation where you could not
12 agree. That's not the way that happened.

13 We are not issuing a blanket protective order for
14 personnel. Intervenors, you have ample opportunity and
15 possibility of developing your case. You know enough
16 people now where you can talk to them and talk to the
17 other people.

18 If and when you get to a specific situation where
19 any one person seeks confidentiality, you can come to us
20 with that problem and the reasons why, and in explaining
21 to these persons the situation you have to explain to them
22 that confidentiality is not what a layman might think.
23 There are going to be a fairly large number of persons,
24 primarily, probably, the persons they would least want to
25 know, who would have to have knowledge; namely, those

1 accused of harassment so that a proper litigation can be
2 prepared by the parties who might disagree.

3 I suggest to you, Mr. Guild, it's not going to be a
4 problem. The reason these inspectors in March did not
5 request confidentiality is because you don't have a
6 situation where you have one inspector on his or her own
7 coming forward and having understandable trepidation about
8 that, given the nature of the complaint. What you had
9 here is a situation of ample strength and numbers, the
10 inspectors, Comstock quality control personnel inspectors
11 and auditors, getting together.

12 I'm telling you my perception is they now have
13 strength in numbers. That combined with the fact that as
14 witnesses for you their future situation will literally be
15 in the public eye, as to any further treatment. You are
16 going to need to explain all that to them. And before you
17 come and seek confidentiality for any person you have to
18 set forth for the Board what it is you told that person as
19 to, A, why we don't believe confidentiality is necessary
20 and, B, why confidentiality does not exclude many persons
21 from having to learn who that person is.

22 MR. GUILD: Judge, if I might, it would be of
23 aid to us if the Board could commit that to a brief
24 writing that might be useful --

25 JUDGE BRENNER: I'm not going to do that. You

1 prepare your own case, sir.

2 MR. GUILD: I only say this --

3 JUDGE BRENNER: I've given you my ruling. I've
4 explained why. I have explained further -- I'm about to
5 explain -- that I agree with Mr. Treby, that the situation
6 becomes very burdensome, out of proportion to the need.
7 But if you can demonstrate a need, that would govern.

8 MR. GUILD: I'm only reluctant --

9 JUDGE BRENNER: Please let me finish because I
10 lose my train of thought too easily as I get older and as
11 the day gets longer.

12 We want, looking at the schedule and given our
13 ruling so far, we have to set a date which would be the
14 last date that you can come in and request confidential
15 treatment. That would be a received date of December 4,
16 1985. I'm telling you, don't come in and request
17 confidential treatment because my view is that it's going
18 to be unnecessary. If you have a particular case, we'll
19 deal with it.

20 The reason we set September 4th is because by
21 September 27th you have the deadline for identifying
22 witnesses and we want to be close to a ruling, if not at a
23 ruling on any confidentiality prior to that time, because
24 then depositions are going to take place thereafter. And
25 you better tell them even with confidential treatment,

1 there is prehearing discovery right and, more importantly
2 the litigation of the hearing.

3 One reason for a ruling is if the Staff and
4 Applicant are correct, that there is nothing else out
5 there and, you know, all you have is these allegations,
6 then they are not going to be harmed by giving you the
7 extra time because you'll come up with nothing. But if
8 they are wrong and you come up with specific instances
9 they will be very useful and important to the court.
10 That's another reason why we have drawn the balance the
11 way we have.

12 We do have some other language that there are some
13 disagreements about --

14 MR. MILLER: Before we go to this specific
15 issue I would like to request on behalf of the Applicant
16 that we get an unexpurgated version of those memoranda
17 that we attached to the supplement. I think we are the
18 only party, including the Board, in the hearing room, that
19 doesn't have one.

20 JUDGE BRENNER: I'm going to deny that request
21 for now without prejudice because I want to give the
22 Intervenor an opportunity to check with those persons, to
23 the extent they want to.

24 MR. MILLER: May we have a short date?

25 JUDGE BRENNER: Yes. I could set a short date

1 just for that, Mr. Guild. I think that's reasonable, as
2 to the ones listed in those memos that you filed that we
3 set some fairly short date to give you a reasonable
4 opportunity to inquire of them. And then, in turn, turn
5 it over.

6 MR. GUILD: Mechanical point first, Judge.
7 We'd need the assistance of the Staff in being able to
8 find them, phone numbers or address. I assume that
9 information was given since the memo reflects it was
10 asked.

11 JUDGE BRENNER: I don't know if it was given
12 because none of what I have has that information.

13 MR. GUILD: None of what we have either,
14 Judge.

15 JUDGE BRENNER: You'll get together and you can
16 also get together with your witnesses that you do know and
17 they'll tell you to the extent they know where the
18 witnesses are.

19 The ones that you have been asserting
20 confidentiality you have been in contact with.

21 MR. GUILD: They have. Yes.

22 JUDGE BRENNER: What would be a reasonably
23 short date but still give you time to do it?

24 MR. GUILD: Friday a week, Judge?

25 JUDGE BRENNER: You mean a week from this

1 coming Friday?

2 MR. CASSEL: That would be August 2nd, I
3 believe, Judge.

4 JUDGE BRENNER: You don't think you can do it
5 in a week?

6 MR. CASSEL: It's tough to catch these people,
7 Judge. They are working. They are not necessarily home
8 when you call them.

9 JUDGE BRENNER: All right. Friday, August
10 2nd.

11 At the same time, on the August 2nd, we want to hear
12 one way or the other what the situation is. Please
13 discuss it with the Staff. Maybe we can get a joint
14 filing since they know who they are and maybe they want to
15 verify what you are telling them.

16 Work out some method of giving the Applicant the
17 unexpurgated portions of any for whom you are not claiming
18 confidentiality. So they can get that at the same time
19 you make your filing as to the others. And as to these
20 persons, also, you are going to have to explain all the
21 pertinent factors.

22 I truly believe or I wouldn't be asserting it, that
23 they have the best possible protection they could have
24 now. As much as they would get with confidentiality
25 agreements.

1 MR. GUILD: Your Honor, that was the only point
2 I interrupted you about. And that simply is this: I
3 disagree with that view and I'm probably in the least able
4 position to communicate that view to someone under these
5 circumstances and that's why I made the inquiry of the
6 Board if they would, you know, commit that view to a brief
7 writing.

8 JUDGE BRENNER: Even if you don't agree with it
9 maybe you can transmit it. Maybe Mr. Cassel will help you
10 find the words.

11 MR. CASSEL: Judge, I don't mean to interrupt,
12 but before we move on to this point I want to return to
13 the point I wanted to raise.

14 JUDGE BRENNER: About other counsel?

15 MR. CASSEL: About other counsel. Right. I
16 don't have any sense that your ruling is anything but fair
17 so I'm not addressing the merits of your ruling. You have
18 obviously tried the best that all three of you could do to
19 come up with a fair ruling.

20 JUDGE BRENNER: Our feelings are never hurt
21 when a party thinks a ruling is unfair. They used to be.
22 That's all right.

23 MR. CASSEL: However, the reputation of an
24 attorney can be hurt when you state in a transcript on the
25 record without an opportunity for a reply by an attorney

1 which could be quoted back in a proceeding that we have
2 not been diligent on a matter. If you would like to hold
3 a factual hearing as to the diligence which we exercised
4 and the efforts we made, that's one thing. But on the
5 basis of an argument where we weren't attempting to defend
6 our diligence, we were attempting to argue to you the
7 relevant merits of the ruling you just made, to make a
8 statement like the one you made that counsel has not been
9 diligent, is a statement which can echo through other
10 courtrooms and through the years, against us, and harm our
11 reputation.

12 I would urge you not to make that kind of a
13 statement unless you are fully satisfied that you have
14 inquired sufficiently into the facts, to state it with
15 confidence. Because it is not true, and if you want to
16 hear chapter and verse of our diligence we'll give it to
17 you but it's not necessary to your ruling in this case.

18 I only want to state that for the record because
19 that kind of a statement by you on the record can hurt us,
20 can hurt us seriously, and it's unfounded.

21 JUDGE BRENNER: I don't mean to hurt your
22 reputation, as you know. However, I think I have enough
23 before me in the particular context in which I made the
24 statement to believe it, in a particular -- and the
25 particular limited context was if protective orders were

1 so important to you, the failure to request one as far
2 back as immediately after our June 21st order, shows an
3 apparent lack of diligence. I'll add the word
4 "apparent."

5 MR. CASSEL: Judge, I won't attempt to make a
6 full showing now --

7 JUDGE BRENNER: Why didn't you request the
8 protective order shortly after the June 21 order?

9 MR. CASSEL: We got your order on June 24,
10 requested the protective order on July 12. During the
11 intervening time we made diligent efforts to get in touch
12 with these people. We didn't have these names. It's not
13 easy to get in touch with them. They are at work at
14 different shifts, they aren't always answering the
15 telephone and they are afraid.

16 Imagine yourself, Judge, put yourself in the
17 position of a worker at the Braidwood plant who is not
18 coming to the NRC resident inspector with a group of 30
19 other people, strength in numbers, but instead you are
20 sitting at home at night and you get a telephone call from
21 a lawyer you have never heard of before, asking you about
22 some legal proceeding. Your reaction is not going to be
23 just open up, and say here's everything that is going on.
24 Let me tell you everything about it. And I want
25 confidentiality. It took time to go to these people to

1 develop the facts sufficiently to present that information
2 to you within 12 -- plus 7 -- within 19 days after
3 receiving the order.

4 Now, I submit to you that if you want to hear a full
5 description of what we did, that you would change your
6 statement of apparent lack of diligence, even further.
7 But I'm not going to burden the record for it now. I just
8 do want to object to that kind of statement.

9 JUDGE BRENNER: Maybe I misunderstood the
10 nature of the protective order that was being sought by
11 the July 12 filing. As I read it, what you were seeking
12 was a general notice to, in effect, anyone out there if
13 you have other information with specifics of harassment
14 with respect to Comstock quality control, come forward to
15 the Board.

16 If that's -- and with the reference to Catawba and
17 the other case -- if that's the kind of notice and
18 confidentiality combined with that notice that you were
19 seeking, and that's what it appeared to me from your July
20 12 filing, I stay with my original view that that could
21 and should have been requested earlier.

22 MR. CASSEL: It's not merely a matter of what
23 we were requesting, it was a matter of developing the
24 information -- even with all we have today you have denied
25 the request. If we had come in today with no ability to

1 tell you we had made diligent efforts to contact a number
2 of people, we had received widespread expressions of fear,
3 fear in some cases even to talk to us, you would have
4 thrown us out of the courtroom and justifiably so.

5 It took time to develop the record, and even having
6 taken that time and made every effort we could to develop
7 the record, you still denied the request. It would have
8 been a waste of your time and it would have been a waste
9 of our time for us to come in and make the request earlier
10 with much less basis that we had when we did make it.

11 JUDGE BRENNER: That makes a lot of sense. I'm
12 glad we had the dialogue for your benefit and for and
13 mine, and I'll retract the statement. When you were
14 meeting your litigation strategies and obligations, while
15 you believed something might still be necessary you
16 believed you needed further time to support it as
17 explicitly as you knew we would require.

18 MR. CASSEL: I thank you very much for that
19 gracious statement, Judge.

20 JUDGE BRENNER: I apologize. Let me phrase it
21 that way.

22 MR. CASSEL: Thank you.

23 JUDGE BRENNER: I like to think I still
24 remember the competing interests in drawing balances in
25 preparing for litigation, but maybe I don't remember them

1 as well as I think.

2 We are on page 4. We are going to leave in the
3 bracketed information, more or less consistent with our
4 earlier ruling, to the extent specifics can be had to
5 support it we'll get to it. And we are going to leave it
6 to the discovery process to identify those specifics, plus
7 the witnessess -- and of course we took it that the word
8 "identifying witnesses" means not just their names but a
9 little bit more so the other parties -- this is mutual
10 among all the parties -- know who they are and what it is
11 that their proposed testimony would address.

12 MR. MILLER: Judge Brenner, the only -- I think
13 you dealt with the bracketed materials.

14 JUDGE BRENNER: Only the first bracket so far.

15 MR. MILLER: I think so. It's the second one I
16 think that stands on somewhat a different footing. We
17 view that as simply surplusage to the contention and
18 really another plea, if you will, for a protective order.

19 JUDGE BRENNER: We are going to remove that
20 from the contention as being in the nature of the argument
21 that we've just had.

22 MR. GUILD: Judge, if I may just for the
23 record, the discussion with counsel that was the basis for
24 the disagreement involved our view -- our express view
25 that that was in addition a substantive allegation and our

1 view that interfering with a witness or prospective
2 witness of in a proceeding is in itself a substantive
3 violation of 10 CFR 50.7, and the statutory basis for that
4 Commission rule as well as being a basis for the
5 protective order, foundation for the protective order.

6 JUDGE BRENNER: In terms of the basis for the
7 protective order we have discussed it. We have left in
8 the first parenthetical, "and systematic harassment at
9 Comstock remains to the present." You come up with some
10 specification and then as the future becomes the present
11 as other things arise you can come to us also.

12 MR. GUILD: Given that; yes, sir.

13 JUDGE BRENNER: We'll delete the second
14 bracket.

15 I think that's it.

16 MR. MILLER: Yes. I would like some
17 clarification. I take it the Board's rulings on this
18 sub-contention does not in any way detract from your June
19 21st ruling with respect to the other portions of the
20 contention that were admitted at that time?

21 JUDGE BRENNER: Judge Callihan thinks on page
22 4, the second brackets I might have said "remove the
23 brackets." If I did, I misspoke. The material bracketed
24 is being removed.

25 Incidentally, back on page 3 in reforming, back on

1 paragraph 1, again, I asked you to refile this as we have
2 admitted it as attached to the original proposal also as
3 we have both versions. I guess you would reform this by
4 taking the underlying phrase "in March 1985" and add that
5 after -- I suggest something like "at various times since
6 at least August 1980" for "including March 1985" and then
7 including the paragraph.

8 There was some momentary confusion by the fact that
9 some words are underlined because they are in bold print
10 or italics as distinguished from being in dispute.

11 MR. MILLER: Correct.

12 JUDGE BRENNER: Now if I remember what you were
13 asking, Mr. Miller, a ruling on the contention as it was;
14 that is, we are only admitting the contention -- and I
15 forget the subpart number but it's the one related to
16 Comstock quality control personnel. And no other. Those
17 are the only ones we have proceeded on since our June 21st
18 order, for the reasons stated in that order. Did I
19 interpret your question correctly?

20 MR. MILLER: Yes, sir. I take it that you do
21 not mean by this ruling to in in any way amend your June
22 21st ruling with respect to other subparts of the
23 contention.

24 JUDGE BRENNER: That's correct, and any time
25 Mr. Treby said "They can ask about anything they want," I

1 said, "No, they can't. But they can now ask about more
2 than you wanted them to.

3 Addressing this now admitted harassment contention,
4 and in fact, the larger quality control contention would
5 also be pertinent here. As you go through discovery, to
6 the extent some of these factual allegations are in fact
7 essentially material points agreed upon by the parties,
8 even though there may be some difference of emphasis, it
9 would be more to the point, from the point of view of the
10 jurisdiction of this Board -- and this gets back to the
11 brief dialogue I had with Mr. Treby as to the interest of
12 the Intervenors -- to focus on what assurance do we have
13 now that possible problems, whether it be harassment or,
14 on -- or any other QA things, have been identified as to
15 the possible root causes or extension of the things that
16 could adversely be affected by such a problem, and checked
17 on, and corrected as necessary as opposed to focusing on
18 who shot who when.

19 MR. MILLER: We are going to take that
20 admonition on behalf of the Applicant very much to heart.
21 I would hope that there may be some mechanisms available,
22 which I hope at some point soon to be able to discuss with
23 the parties, that will enable the Board to focus, to the
24 extent feasible, on the corrective actions to the extent
25 there's no dispute about the underlying issue that caused

1 the corrective actions to arise.

2 JUDGE BRENNER: We're sure all the parties
3 realize that. I just mentioned it in any event. I didn't
4 dream up the idea for you, and in fact, the admitted
5 contention when it came in also alluded to that
6 possibility.

7 MR. TREBY: For the Staff, we'd like to
8 indicate that we agree fully with what you just said and
9 we apologize if our pleading was unclear because we noted
10 in your discussion in your June 21st order that you
11 perceive that the Staff thought differently, that we were
12 not interested in corrective actions. That's not true.
13 The Staff thinks that in fact the corrective actions are
14 far more important matters than whether -- who shot John
15 matters. As we said all along, the Staff has never
16 disputed that there was a QA problem at Braidwood. In
17 fact, that's why the regional administrator and other
18 officials at region 3 have had conversations with the
19 utility and directed corrective action programs.

20 JUDGE BRENNER: We must have misunderstood the
21 Staff filing on that point and, again, it was in a
22 particular context that we thought the Staff had said
23 something and we discussed it in that context in our order.

24 There are other agencies with jurisdiction in
25 harassment problems, as is recognized in these documents,

1 such as the Department of Labor. And, while some of the
2 underlying problems would be their concern as well as our
3 concern, they would be for different reasons. We are
4 interested in the integrity of the plant and any adverse
5 affect on the integrity of the plant caused by mistreatment
6 of the employees. But in terms of individual remedies,
7 employment-related disputes, that has to go before the
8 Department of Labor. You are nodding, Mr. Cassel and
9 Mr. Guild, so I guess you understood that.

10 MR. CASSEL: Yes, Judge, we did.

11 JUDGE BRENNER: Did the parties have anything
12 else today? We had one or two brief matters --

13 MR. MILLER: I just wanted to inquire of the
14 Board as to whether there was any specific plant area that
15 you wished to view tomorrow?

16 JUDGE BRENNER: We'll cover that in a moment.

17 MR. MILLER: Thank you.

18 JUDGE BRENNER: We did want to give you, now,
19 our oral ruling. Proposed findings pursuant to 10 CFR
20 section 2.754 are indeed required by this Board, and the
21 effect of that ruling based on the case law is that
22 failure to file proposed findings is a default on any
23 issue. Those findings are very important to a board,
24 being able to have help in understanding what the
25 disagreement is after the evidentiary hearing.

1 We also plan to set a proposed finding schedule
2 after the October hearings for the matters for which
3 litigation was completed, in a meaningful enough extent
4 that such proposed findings should be filed at that time
5 so they wouldn't wait until after the January hearings to
6 schedule proposed findings. That way we'll have something
7 to work on before the hearing. The issues are separate.
8 The major participating Intervenors are separate or
9 separated within the group, and the Staff and Applicant
10 have plenty of people to work on findings as well as the
11 case.

12 We have required cross-examination plans as set
13 on the schedule and those are to be supplied to the Board
14 in confidence. If the parties have no objection to
15 providing them to the other parties in advance, sometimes
16 that actually assists matters, but that's up to you. If
17 any party wants the cross-examination plans of another
18 party after the litigation on that entire issue has been
19 completed, all you have to do is ask the other party and
20 they are obligated to give it to you. That would be after
21 the fact.

22 MR. MILLER: I take it, Judge Brenner, that
23 cross-examination plans need not be overly elaborate? You
24 do not require each question, for example?

25 JUDGE BRENNER: That's correct. However, don't

1 be too brief either. It could be a point-by-point-type
2 identification.

3 Let me say for your benefit, Ms. Rorem, that it
4 has been my experience that someone who might be less
5 experienced in cross-examination is better off writing it
6 out, question by question. I think you'll find that it
7 will help you, as long as you remember that you don't have
8 to stay with each question so much so that you haven't
9 listened to the answer and so that you can adjust your
10 next question.

11 Cross-examination plans are an important guide.
12 We would not expect a wholly new area to be cross-examined
13 into, which area could have been anticipated before the
14 filing of the plan, if it's not covered in the plan.

15 On the other hand, we recognize that you have
16 to be free and are free to follow up to testimony you hear
17 at the hearing with follow-up questions. You are free to
18 do that.

19 MR. TREBY: Judge Brenner, perhaps for the
20 benefit of the Intervenor, you could identify another
21 case where such cross-examination plans --

22 JUDGE BRENNER: They won't find the plans,
23 though.

24 MR. TREBY: In none of the other cases were
25 those plans made public?

1 JUDGE BRENNER: Not through the mechanism of
2 the Board, except very early on in the Three Mile Island
3 restart proceeding, I think they were for a time.

4 What happened in all the other proceedings I am
5 familiar with is the parties on their own -- it got
6 burdensome for the Board to release them so we adopted the
7 strategy of saying, if you want them, ask the other
8 parties for them. To the extent those arrangements took
9 place we would not necessarily have knowledge of them,
10 although I know in at least one large case the parties
11 stipulated that they wouldn't ask each other for them even
12 after. I don't know why.

13 But, since you made the suggestion, Mr. Treby,
14 I'll bet if you talk to your other Staff counsel they may
15 have some cross-examination plans from other hearings --

16 MR. TREBY: Oh, I'm sure.

17 JUDGE BRENNER: -- that you can show them, for
18 example. But for your benefit, Mrs. Rorem, those plans
19 are probably not the type that would be of greatest help
20 to you to prepare. You should come closer to writing out
21 the questions. In fact, I have seen experienced counsel
22 who might have been better off coming closer to doing that
23 too, several times.

24 MR. CASSEL: If Mr. Treby would like some of my
25 old cross plans from the Byron proceedings, I'll be happy

1 to give him that.

2 JUDGE BRENNER: You are -- her own counsel will
3 give her their cross plans.

4 (Discussion off the record.)

5 JUDGE BRENNER: We are finished with everything
6 else except discussing the site visit; correct?

7 MR. CASSEL: As far as we know.

8 MR. MILLER: Yes, sir.

9 JUDGE BRENNER: To answer your question,
10 Mr. Miller, we would like to see the training facility,
11 which we understand is at the site or adjacent to the site,
12 and that includes the simulator, as we understand it.

13 MR. CASSEL: It may extend the tour beyond the
14 two-hour time period that you allowed if the other aspects
15 of the facility are at least pass-through, such as the
16 auxiliary room, control room, and so on.

17 JUDGE BRENNER: I realize we didn't give you
18 notice.

19 MR. MILLER: It's not a question of notice.
20 It's a question of taking out perhaps some of the other
21 aspects of the tour.

22 JUDGE BRENNER: Could we see that first and
23 then adjust the rest of the tour? In case some of us want
24 to see less than others?

25 MR. CASSEL: Could we go off the record a

1 minute?

2 (Discussion off the record.)

3 JUDGE BRENNER: All right. Let's adjourn for
4 the day. I do want to thank counsel and Mrs. Rorem for
5 their patience, particularly for their forbearance, when
6 they don't disagree with everything we are saying. That's
7 the nature of the give-and-take process. It enlightens us,
8 and that's what we are here for, frankly, is to have
9 ourselves enlightened and not necessarily towards pleasing
10 everyone. We appreciate the fact that you share the goal
11 of enlightening us even when you disagree with us and
12 thank you all for your time.

13 (Whereupon, at 4:55 p.m., the prehearing
14 conference was adjourned.)

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CERTIFICATE OF OFFICIAL REPORTER

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

NAME OF PROCEEDING: COMMONWEALTH EDISON COMPANY
(Braidwood Nuclear Power Station,
Units 1 and 2)

DOCKET NO.: 50-456; 50-457

PLACE: JOLIET, ILLINOIS

DATE: TUESDAY, JULY 23, 1985

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

(sig) 

(TYPED)

JOEL BREITNER
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