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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

'85 JUL 15 AIO:31

In the Matter of:

COMMONWEALTH EDISON COMPANY

(Braidwood Nuclear Power
Station, Units 1 and 2)

Docket Nos. 50-456 06
50-457 06

OFFICE OF GENERAL
COUNSEL
NRC

INTERVENOR'S ANSWER TO COMMONWEALTH EDISON COMPANY'S
MOTION FOR SUMMARY DISPOSITION ON PLEADINGS

Intervenor, Bob Neiner Farms, Inc., et al., opposes the Motion for
Summary Disposition of Intervenor's Contention 1.

Argument

A. Intervenor has substantial factual and scientific evidence to support its
contention. Previous filings in this matter, responses to written
interrogatories, the attached affidavits, and depositions show that there is
substantial evidence to support the contention as worded. Commonwealth
Edison Company, in its motion, does not address this point.

1. Prior to the filing of the motion, Commonwealth Edison Company
engaged in discovery through written interrogatories, deposed Lorraine Creek
as representative of Intervenor, and deposed Dr. Edwin D. Pentecost of the
Nuclear Regulatory Commission, all directly related to Contention 1.

2. Prior to the filing of the motion, Commonwealth Edison Company
referenced the 765 kV transmission line in its environmental statements in
both ER-CPS and ER-OLS.

3. In its deposition of Dr. Edwin D. Pentecost on May 23, 1985,
Commonwealth Edison Company extensively questioned Dr. Pentecost on the
adequacy of the Nuclear Regulatory Commission's evaluation of the 765 kV
transmission line. On page 77 and 78 of that deposition Commonwealth Edison
Company discussed arranging a site visit of the line corridor for Dr.
Pentecost.

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B. Intervenor contends that there is a genuine issue to be heard.

1. Commonwealth Edison Company, using the "Getty Affidavit," contends that the Company never planned to build a 765 kV line to transmit power from Braidwood Units 1 and 2. This statement is contradicted by the continued references, starting in 1974, in safety evaluation reports, and the ERS-CPS and ER-OL to only two Braidwood units while the ERS reports continued to reference the 765 kV line. The statement is also contradicted by the acquisition of 97% of the 765 kV right of way corridor which is at issue in Contention 1.

2. Commonwealth Edison Company, using the "Getty Affidavit," contends that the Company is maintaining the option of installing the line at Braidwood 25 years or more in the future. Since an operating license is for a 40-year period, the issue is now as ripe for litigation and evaluation as any other matter covered by the license that could occur within that 40-year period.

3. There is a possible nexus between a 345 kV line and an already existing 765 kV line. Public records indicate that a 345 kV line originating at LaSalle passes through Braidwood and terminates at East Frankfort. The East Frankfort station is connected into the Wilton Center station from which a 765 kV transmission line begins.

4. The future load growth for the system is difficult to predict and Intervenor would be prepared at a hearing to indicate by testimony the difficulty and the speculative nature of future load growth estimates.

C. The amendment by Commonwealth Edison Company of its Environmental Report should not be controlling as to whether there is a genuine issue to be heard.

1. Neither Contention 1 has been at issue as a contention for a number of years, since approximately 1979. The amendment by Applicant of its

environmental report should not eliminate the 765 kV line safety, health and environmental concerns expressed in Contention 1 from the jurisdiction of the Board. Intervenor has submitted adequate evidence to show that the concerns are supportable and pose significant dangers to Intervenor.

2. Intervenor has expended considerable time, effort and money in addressing this issue.

3. Intervenor has shown that there is substantial evidence to support its contention.

4. Commonwealth Edison Company made no formal effort to attempt to remove this issue from litigation until June 10, 1985 - a considerable amount of time (years) after they contend they knew they had no plans to build the line in connection with Braidwood 1 and 2. Yet, they continued to reference the 765 kV line in the environmental reports.

D. NRC case law does not support Applicant's position.

1. The purpose of the Summary Disposition rule is to carefully test out, prior to hearing, whether a party has any evidence to support its contentions. Gulf States Utilities Co., 1 NRC 246 (1975).

2. In deciding a motion for summary disposition, the record is to be viewed in the light most favorable to the party opposing the motion. Gulf States at page 247.

3. The party opposing the motion need not show that it would prevail on the factual issues, but only that there are such issues to be tried. Gulf States Utilities Co., 1 NRC 246 (1975).

4. Kansas Gas and Electric Company, 5 NRC 1, 9-11 (1977), is not relevant. The issue in that case related to a construction permit for an access road and railspur during a prelicensing activity and whether or not the construction of the access road and the railspur was related to the intention to construct a nuclear facility.

5. Detroit Edison Company, 8 AEC 936 (1974), is not relevant. As Applicant stated in its brief, the argument was that the lines were only necessary to strengthen the power grid. There is no evidence in this case indicating that the only purpose of the 765 kV line is to strengthen Applicant's power grid. Because Applicant, in that case, could not state that identical power lines along identical routes would be erected irrespective of the facility, the Appeal Board was unpersuaded. This case would support an argument that only a slight nexus is necessary between the plant and the proposed lines.

6. Virginia Electric and Power Company, 2 NRC 879 (1975), is not relevant. The issue in this case was the appropriate route for a south to north transmission line. The statements (quotes) cited by Applicant in its brief of this case are only relevant to the issue of that case - the most appropriate route for the line. Determining the route is not at issue here. The Applicant has already acquired 97% of the right of way corridor for the 765 kV line.

7. The decisions cited in 4., 5., and 6., above do not demonstrate that the Applicant's plans for a future 765 kV transmission line are not appropriately within the scope of the Commission's NEPA jurisdiction in this operating license proceeding. The facts and issues of the cases cited in support of that statement are not relevant to the issue in this proceeding.

As a close reading of North Anna (Virginia Electric and Power Company) shows, the statements by the Board in that case would not be relevant to the fact issue of braidwood. Intervenor argues that Applicant has erroneously attempted to place too much reliance on that case as support for its motion.

9. Intervenor disagrees that the only way that the 765 kV line could be held to be within the Commission's NEPA jurisdiction in this proceeding would be to suggest that the mere acquisition of the right of way in connection with proposed structures not associated with the project under consideration invokes the Commission's NEPA jurisdiction.

The 765 kV line, until a partial amendment on June 10, 1985, has been referenced in Applicant's ERS reports to Braidwood 1 and 2. There is a 765 kV line already emanating from Wilton Center Station - the place where the proposed 765 kV line would feed. NRC has evaluated the environmental effects of the 765 kV line in relation to Braidwood 1 and 2. (Dr. Pentecost deposition)

Intervenor contends that the deposition of Dr. Pentecost indicates that some of the environmental effects that Intervenor seeks to place in issue have been inadequately evaluated. This should not be support for the argument that therefore the health, safety and environmental concerns raised by the Intervenor in its contention are of an insignificant nature and should not be evaluated or litigated.

Summary

Intervenor respectfully requests the Board to deny the Motion for Summary Disposition of Intervenor's Contention 1. Intervenor has shown there is substantial evidence to support its admitted Contention, that there is a genuine issue to be heard by the Board, that case law does not support the Applicant's position, and that within the scope of the time period of the operating license, now is the proper time to hear Contention 1. Should the Board so request, Intervenor would be cooperative in attempting to narrow the scope of the contention, especially in regard to the conditions listed in the contention as hazardous and dangerous.



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Docket Nos. 50-456
50-457

CERTIFICATE OF SERVICE

I hereby certify that copies of INTERVENOR'S ANSWER TO MOTION FOR SUMMARY DISPOSITION (with attachments) were served on the persons listed below and identified with an asterisk by Federal Express, and the remaining persons listed below by depositing same in the United States mail, first-class postage prepaid, this 10th day of July, 1985.

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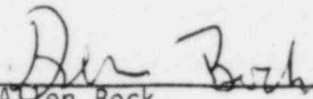
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