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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

DOCKETED
USNRC

Before Administrative Judges:

Lawrence Brenner, Chairman
Dr. A. Dixon Callihan
Dr. Richard F. Cole

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OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

In the Matter of

COMMONWEALTH EDISON COMPANY

(Braidwood Nuclear Power Station,
Units 1 and 2)

Docket Nos. 50-456 *OL*
50-457 *OL*

August 1, 1985

PREHEARING CONFERENCE ORDER

The following confirms the rulings made at the prehearing conference held on July 23, 1985, in Joliet, Illinois. A schedule is appended as Attachment A to this Order. All dates set forth are received dates, unless otherwise noted.

Quality Assurance

The schedule proposed by the Commonwealth Edison Company (Applicant), Intervenor Rorem et al. (Rorem) and the NRC Staff, filed by the Applicant on July 19, 1985, was approved by the Board. Tr. 208. That approval is subject to the understandings of the parties set forth in the July 19, 1985 cover motion to the proposed schedule. Id.

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In summary, the parties have agreed that the time needed by Applicant to pursue its corrective action programs requires that the hearing on the Rorem QA contention not be scheduled to begin before January 20, 1986.

The jointly stipulated "Quality Control (QC) Inspector Harassment Contention" (Tr. 210-14), with the few disagreements ruled on by the Board, was approved. See Tr. 215, 254-56, 259, 267-68. The QC Inspector Harassment Contention, as admitted by the Board, is appended as Attachment B to this Order.

Other rulings on the schedule for prehearing actions on the Rorem QA contention are reflected in the attached schedule.

Emergency Planning

Mrs. Rorem failed to answer Applicant's June 11, 1985 motion for summary disposition of Rorem Contention 1(c) (medical treatment of operating personnel). The NRC Staff, by its answer of July 11, 1985, supported Applicant's motion. Mrs. Rorem stated that she had not filed an answer because that part of the contention is not that important to her in light of other parts. Tr. 102. The Board ruled that Mrs. Rorem's acts and position constituted, in effect, a withdrawal of or default on the contention. Tr. 103, 116-17. In any event, subject to the need for verification and further information noted below, the Board

finds that Applicant's motion and statement of material facts as to which there is no genuine dispute, entitles Applicant to summary disposition in its favor on Rorem Contention 1(c). Id.

The Board requested some information related to Rorem Contention 1(c) in our Order of July 16, 1985. The information reported by Applicant's counsel as to locations of other hospitals and ambulance running times satisfies the Board that there is no hospital which would provide significantly faster treatment for contaminated injured operating personnel than the one selected by the Applicant (St. Joseph Medical Center, Joliet, Illinois). The Board required that the information be confirmed as soon as practicable by affidavits. Tr. 109-10. See Tr. 106-109.

At the Board's request, the Applicant will file, as soon as practicable, affidavits setting forth whether Applicant should make backup arrangements to use a medevac helicopter service to transport site personnel to the St. Joseph Medical Center, depending on the location and running times involved for such transportation, as compared to the time involved in using only the ambulance services. Tr. 117-18.

The hearing on Rorem Contention 1(a) (dissemination of public information for emergency planning) will begin on or about October 8, 1985. Prehearing steps, including the dates for identification of witnesses (September 4), the latest date for receipt of the NRC

Staff-FEMA evaluation report on matters arising under this contention (September 13) and the due date for written direct testimony (September 20), are set forth in the attached schedule. As discussed at the prehearing conference, parties may argue (or even agree) that specified further emergency planning work material to this contention must be done and considered after the October 8 hearings. Tr. 188-89. The schedule for Rorem Contention 1(a) assumes that the applicable State and/or local emergency plans will be furnished to the parties and FEMA in early August 1985.

The hearing on Rorem Contention 1(b) (evacuation of special facilities) will be held as part of the January 1986 hearings, with the QA issues, in a sequence to be decided upon. By agreement of the parties, the reference to "hospitals" has been deleted from Rorem Contention 1(b). Tr. 118-19.

Mrs. Rorem was ordered to mail her answers to Applicant's "Set II" interrogatories 19, 20, 22 and 23 by August 1.

Neiner Farms Contention 1 (765 kV Transmission Line)

Applicant's motion for summary disposition, supported by the NRC Staff and opposed for now by Neiner Farms, is pending before the Board. The parties will propose possible license conditions related to this contention, and attempt to reach agreement on summary disposition.

Tr. 198-99. As extended, pursuant to the July 31 telephone request of the parties, the due date for the report is August 6. If not summarily disposed of, the hearing on this contention will begin on or about October 1, along with Neiner Farms Contention 4, in a sequence to be decided upon.

Neiner Farms Contention 4 (Railroad Explosion)

The parties are negotiating possible agreements, partial stipulations, and/or license conditions related to this contention. They will file a status report by August 9. Tr. 199. See Tr. 161-65.

Proposed Findings

Pursuant to 10 C.F.R. § 2.754, all parties are required to file proposed findings of fact and conclusions of law on issues in which they have participated or have an interest. Tr. 272. Failure to do so shall be deemed a default on the particular issue. The particular format for proposed findings will be discussed in the course of the proceeding. Proposed findings which are complete, accurate, balanced and supported by the evidentiary record clearly have the best chance of being relied upon by the Board. Even where not directly adopted, such findings should be a valuable guide to the evidentiary record, since the Board's memories, hearing notes and record research cannot generally be the

equivalent of the record research conducted by the interested litigating parties on matters in controversy.

The Board contemplates that proposed findings will be required pursuant to the schedule of Section 2.754 after litigation of issues in the October 1985 first phase of the hearings. Tr. 273.

Transcript Corrections

The Board believes the following errors of substance or attribution in the transcript could affect the understanding of the proceeding, and therefore should be noted.

- Tr. 136, line 1: Change "Our" to "Her."
- Tr. 148, line 11: Correct Swain v. Brinegar case citation to "542 F.2d 364, 369."
- Tr. 251, line 2: Change "interest is in" to "interest is not in."
- Tr. 258, line 15: Change "December 4" to "September 4."
- Tr. 262, line 21: Change "They used to be" to "We're used to that."
- Tr. 276, line 13: Change "MR. CASSEL" to "MR. MILLER."
- Tr. 339, line 19: Delete "JUDGE BRENNER:". (Mr. Campbell was still speaking.)

Reconsideration

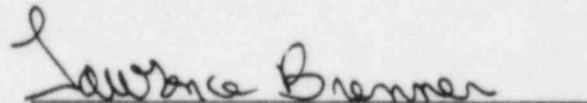
Pursuant to 10 C.F.R. § 2.752(c), parties other than the NRC Staff may file "objections" (motions for reconsideration) to this Prehearing Conference Order with the Licensing Board within five days after service of the Order; the Staff may file objections within ten days after service. Parties may not file answers to any objections unless the Board so directs.

In closing, the Board wishes to commend the parties for their energetic efforts at negotiating agreements on important matters, including schedules, possible license conditions, and wording of contentions. As is apparent from some of the actions recited in this Order, the Board has depended on such efforts in the past and we are continuing to depend on such efforts in the future. The Board believes, and we hope the parties agree, that negotiations greatly benefit the parties and the proceeding. The Board knows that the matters which the parties will continue to negotiate (including those noted in this Order, the QA discovery disputes, and stipulations of fact to make the litigation more effective and efficient) will require initiative,

imagination and hard work by the parties. The Board wants the parties to know that their efforts are appreciated.

IT IS SO ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD


Lawrence Brenner, Chairman
ADMINISTRATIVE JUDGE

Bethesda, Maryland
August 1, 1985

Attachments:

- A. Schedule
- B. QC Inspector Harassment
Contention

ATTACHMENT A TO BRAIDWOOD PREHEARING CONFERENCE ORDER
(AUGUST 1, 1985)

SCHEDULE

July 30, 1985	Applicant and NRC Staff objections to selected Rorem QA interrogatories and document requests.
August 1	Rorem mails answers to Applicant's "SET II" interrogatories, numbers 19, 20, 22 and 23.
August 2	Any motions by Rorem for confidential treatment of names of Comstock employees identified in attachments to July 12 supplement to harassment contention.
August 6	Proposed license conditions related to Neiner Contention 1, and possible agreement on summary disposition of the contention.
August 9	Report on possible stipulations related to Neiner Contention 4.
August 9	Applicant and NRC Staff (to the extent not previously furnished) complete answers to Rorem's QA interrogatories and related document requests; answers (motions to compel discovery) in response to July 30 objections to Rorem QA discovery requests.
September 4	Identification of witnesses on Rorem Contention 1(a).
September 4	Any motions by Rorem for confidential treatment of witnesses on QA harassment issue.
September 13	NRC Staff-FEMA evaluation report on emergency planning matters arising under Rorem Contention 1(a).
September 13	Written direct testimony on Neiner Contentions 1 (unless summary disposition is granted) and 4.

SCHEDULE (con't.)

September 20, 1985	Motions to strike September 13 prefiled testimony.
September 20	Written direct testimony on Rorem Contention 1(a).
September 27	Deadline for identifying QA witnesses, except for the safety-related equipment issue (hereinafter "82-05 issue"). QA discovery ends except for deposition of witnesses and discovery generally on 82-05 issue.
September 27	Motions to strike September 20 prefiled testimony.
September 27	Answers to motions to strike and cross-examination plans on September 13 prefiled testimony.
October 1 (approximately)	Begin hearings on Neiner Contentions 1 and 4.
October 1	Results of 82-05 Corrective Action Program assembled by site project management and Region III and Rorem briefed on results of 82-05 issue.
October 4	Answers to motions to strike and cross-examination plans on September 20 prefiled testimony.
October 8 (approximately)	Begin hearings on Rorem Contention 1(a).
October 11	Motions for summary disposition on QA contention (no summary disposition on 82-05 issue).
October 15	Depositions of all witnesses completed except for 82-05 issue; report on 82-05 Corrective Action Program received by parties.

SCHEDULE (con't.)

November 8, 1985	Answers to motions for summary disposition.
November 19	Written Staff position on 82-05 issue received by parties and witnesses on said program identified.
December 2	Last date for receipt of FEMA findings on emergency planning.
December 2	Target date for Board ruling on motions for summary disposition of QA issues.
December 3	Discovery ends on 82-05 issue.
December 23	Written direct testimony on QA issues remaining after summary disposition and Rorem Contention 1(b).
January 6, 1986	Motions to strike prefiled testimony.
January 13	Answers to motions to strike and cross-examination plans.
January 20 (approximately)	Hearing commences on QA and Rorem Contention 1(b) (evacuation of special facilities) issues.

QC INSPECTOR HARASSMENT CONTENTION

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, including in March 1985, more than twenty five (25) Comstock QC inspectors have complained to the NRC 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.

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.