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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

Herbert Grossman, Chairman
Dr. A. Dixon Callihan
Dr. Richard F. Cole



SERVED OCT 21 1985

In the Matter of

COMMONWEALTH EDISON COMPANY

(Braidwood Station, Units 1 and 2)

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

ASLBP No. 79-410-03-OL

October 18, 1985

MEMORANDUM AND ORDER
(Granting Applicant's Motion
to Particularize Rorem Contention 1(a),
Subject to Reconsideration)

Rorem Contention 1(a) states:

Intervenor contends that an adequate emergency plan for the Braidwood Station should include the following:

(a) a program for informing the public within 10 miles of the station of the means for obtaining instructions for evacuation or other protective measures in the event of a radiological emergency originating at the Station.

In its motion of August 15, 1985, to particularize Rorem Contention 1(a), as supplemented by letter of October 2, 1985, Applicant

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points out that the contention could refer to either or both of two distinct activities: (1) a public education and information program to be implemented prior to an accident; and (2) the notification of the public at the time of an accident. Applicant requests that we particularize the contention to encompass only the first area, educating the public before an accident occurs.

By letter dated October 8, 1985, Intervenor Rorem requests that Applicant's motion to restrict the meaning of her contention be denied and that "public notification activities at the time of an accident should not be excluded from consideration."

The Board grants Applicant's motion and restricts the contention to the education of the public before an accident. We do this, however, subject to reconsideration of this restriction if Intervenor attempts to meet the burden of coming forward with evidence of alleged deficiencies in the program for notification of the public at the time of an accident. Intervenor's burden can be met, of course, by examination of adverse or independent witnesses, as well as her own, but we require that she first file an offer of proof, in the manner described below, if she would have us reconsider our ruling limiting Contention 1(a). If the Board does reconsider its ruling limiting the scope of the contention, Applicant will be given further opportunity to meet its burden of proving the adequacy of its program vis-a-vis the particulars raised by Intervenor.

M E M O R A N D U M

In the prehearing conference of July 23, 1985 (Tr. 122-23), the Board asked Ms. Rorem what she believed to be in controversy in Contention 1(a). She responded that Applicant and Staff were fairly familiar with what she meant in that contention "which involves educating the public beforehand about what procedure[s] should be followed [and] why they should be followed . . .". As examples, she gave "such things as the emergency planning brochure, other public information programs, education in the school systems, whatever."

Prior to the prehearing conference, Ms. Rorem had been deposed (deposition of May 21, 1985) and, subsequent to it, had answered interrogatories concerning the substance of her contention. While Applicant's discovery, arguably, can be interpreted as not having directly committed Ms. Rorem to limiting the scope of her contention, she was given ample opportunity to discuss the content of her contention. Not once did she focus on anything but Applicant's program of educating the public before the occurrence of an accident. The sole dispute regarding the scope of the contention concerned the Staff and Applicant's attempt to restrict the focus of the hearing to the emergency brochure, and Ms. Rorem's insistence that all other pre-accident information programs be examined also. See e.g. Tr. 177, 180-81.

It is only after discovery on this issue has been concluded, and after the time for filing direct testimony has passed, that Intervenor insists that matters other than pre-accident public education programs were encompassed by Contention 1(a).

We make no attempt to speculate about Ms. Rorem's understanding of the contention when it was offered by her and adopted by the Board. Nor do we attempt to inhibit Ms. Rorem from presenting her case through the examination of Applicant's and Staff's witnesses, rather than of those she might bring forward herself. Even if, however, she had intended to make her direct case through the examination of adverse, hostile, or independent witnesses who were being offered by other parties to testify only on other matters, she had an obligation to disclose her case before the deadline on offering pre-filed direct testimony had passed. Similarly, any intention to pursue areas other than pre-accident information programs should have been disclosed during discovery in the face of the concerted effort by Applicant and Staff to search out her case.

She filed no statement with the Board regarding her direct case by the deadline for prefiling direct testimony. Nor did she indicate any specific concern during discovery of matters other than pre-accident information programs. Moreover, Intervenor failed to disclose any other issues at the July 23, 1985 prehearing conference,

called, in part, to consider the "[s]implification, clarification, and specification of the issues." See 10 C.F.R. § 2.752(a)(1).

In light of the above, we interpret and clarify Rorem Contention 1(a) as encompassing only pre-accident public education programs. However, taking into account Ms. Rorem's unfamiliarity with legal requirements concerning the disclosure of her case, we make our ruling expressly subject to reconsideration only if Ms. Rorem comes forward with significant issues concerning public information programs other than at the pre- accident stage, prior to the hearing scheduled for October 29, 1985. Ms. Rorem must disclose such other issues, and her means of presenting them, in a document entitled "Offer of Proof", to be delivered to Applicant and Staff by close of business on October 25, 1985 at counsel's business offices, and to the Board by 2:00 p.m., October 28, 1985 at

Louis Joliet Renaissance Center
214 North Ottawa Street
Joliet, Illinois 60431

In no event, even if the Board reconsiders its ruling, will Applicant have the burden of proving the adequacy of public education programs other than those involving the pre-accident stage or the specific other items that might be raised in Intervenor's offer of proof. And, with regard to any of these "other items", Applicant will

be given sufficient time to prepare for a further hearing if it desires one.

O R D E R

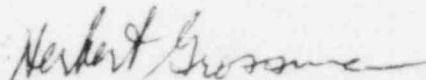
For all of the foregoing reasons and based upon a consideration of the entire record in this matter, it is, this 18th day of October, 1985,

ORDERED

- (1) That Applicant's motion to particularize Rorem Contention 1(a) to encompass only the public education and information program implemented prior to an accident, is granted;
- (2) That any motion for reconsideration by Intervenor be accomplished by a document entitled, "Offer of Proof," the contents of which will be as described above, to be delivered to the parties by October 25, 1985 and the Board by October 28, 1985, in the manner described above;
- (3) That Applicant's burden of proof will extend only to the pre-accident public education program and any specific item of its other public education programs that the Board may include in Rorem Contention 1(a) upon reconsideration of this ruling; and

- (4) That Applicant will be given sufficient time to prepare to meet its burden on any "other" public information program that might be included in the contention on reconsideration, if further hearing is requested.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD



Herbert Grossman, Chairman
ADMINISTRATIVE JUDGE

October 18, 1985,
Bethesda, Maryland