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August 16, 1985

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

RELATED CORRESPONDENCE

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

DOCKETED
USNRC

In the Matter of:)
COMMONWEALTH EDISON COMPANY)
(Braidwood Nuclear Power)
Station, Units 1 and 2))

Docket Nos. 50-456OL
50-457

'85 AUG 19 P12:07

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RESPONSE TO APPLICANT COMMONWEALTH EDISON
COMPANY'S FIRST SET OF QUALITY ASSURANCE
INTERROGATORIES AND REQUESTS TO PRODUCE DOCUMENTS
DIRECTED TO INTERVENORS BRIDGET LITTLE ROREM, ET AL.
AND MOTION FOR PROTECTIVE ORDER

Intervenors Bridget Little Rorem, et al., by their under-
signed counsel, hereby respond to Applicant Commonwealth Edison
Company's First Set of Quality Assurance Interrogatories and
Requests to Produce Documents, which were served August 2, 1985.
Pursuant to 10 CFR Section 2.740(c), Intervenors move for the
entry of a protective order as to each interrogatory and request
for production of documents, or portion thereof, as to which
they herein object. As the Board has previously directed and
as the parties have previously undertaken, Intervenors will
endeavor to negotiate and resolve discovery disputes including
our objections prior to seeking a ruling from the Board on the
Motion For Protective Order.

By way of introduction Intervenors note that their discovery
requests of Applicant and the NRC Staff, consisting of interroga-
tories and requests to produce documents served July 2, 1985,

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still remain substantially unanswered; or, where answered, have been answered only so recently and in such a manner that at this time Intervenor's have not had sufficient opportunity to examine, inspect and evaluate the information in order to incorporate such information in this response. Although complete answers to Intervenor's interrogatories and document production requests were due to be served August 9, 1985, a Third Partial Response was served August 10, a Fourth Partial Response was served August 12 and a Fifth Partial Response was served after close of business August 13, 1985. Intervenor's are informed by Applicant's counsel that documents identified in answer to Intervenor's interrogatories are to be made available for inspection and copying at their offices after August 19, 1985. Answers to several critical interrogatories including Number 58 which seeks information regarding corrective actions taken to remedy deficiencies identified in the amended QA contention are to be provided by August 23, 1985.

As directed by the Board, the parties have sought to negotiate discovery disputes prior to seeking Board rulings on objections. Intervenor's anticipate that additional answers and information may be forthcoming from Applicant and the NRC Staff although presently the subject of their objections, either by voluntary agreement or by Board Order.

On August 1, 1985, Intervenor's served their Response to NRC Staff Interrogatories and document production requests. This NRC Staff discovery sought information on Intervenor's

position regarding each subpart of our amended QA contention including particularly other instances of violations of the cited 10 CFR Part 50, Appendix B criteria and corrective actions taken. Where answers to Applicant's interrogatories have already been provided in response to this NRC Staff discovery, these answers are not repeated here in the interest of brevity, but such previous answers are specifically identified in response to the appropriate interrogatory by Applicant.

Applicant seeks the production of documents from Intervenorors for inspection and copying. Documents identified in the answers to the following interrogatories, except those which are privileged, will be made available for inspection and copying at counsel's office in Chicago, Illinois, at a time to be agreed upon. In the course of preparing for the litigation of this contention, advising and communicating with intervenors and others, documents are prepared by counsel or at counsel's direction which are privileged and not subject to discovery pursuant to 10 CFR Section 2.740(b)(1). Such documents as trial preparation materials are subject to a work product privilege and an attorney-client privilege protects from disclosure the mental impressions and opinions of counsel. 10 CFR §2.740(b)(2). Such documents as handwritten notes, memoranda and other documents prepared by Intervenorors' counsel or at counsel's direction are privileged and protected from disclosure. Intervenorors object to the production of such documents and ask the Board to enter an order protecting such materials from disclosure.

Q1: Describe every oral communication which you have had which refers or relates to each subpart of the contention by:

- a. date;
- b. whether the communication was on the telephone or in person;
- c. the subject matter of the communication; and
- d. identify all persons participating therein.

You may exclude all such communications in which counsel for Staff and/or Applicant participated.

A1: This interrogatory impermissibly seeks the description of "every" oral communication "which refers or relates to" the subparts of the contention participated in by Intervenor's "attorneys, including all employees of BPI." Intervenor's object to the description of communications which are exempt from discovery as attorney-client and attorney work product privileged information. Oral communication by and among Intervenor's counsel, counsel's employees, agents and advisors, Intervenor's, and persons seeking legal advice are protected from discovery. 10 CFR §2.740(b)(1) and (b)(2); Rule 26(b)(4), Federal Rules of Civil Procedure. To the extent Applicant seeks communications by "Stanley Campbell and Diane Chavez" as included in the definition of the terms, "you and your," Intervenor's object on relevance grounds since neither Mr. Campbell nor Ms. Chavez are parties to this proceeding. Aside from oral communication in which counsel (or counsel's employees and

agents) were participants, no other communication is believed to have occurred as sought by this interrogatory.

Counsel for Intervenorors have had oral communications with a number of prospective expert consultants and advisors, none of whom are presently expected to be called as witnesses at trial. Intervenorors object to disclosing the identities of these persons or the content of the communication(s) with them. 10 CFR §2.740(b)(2); Rule 26(b)(4), Federal Rules of Civil Procedure.

Intervenorors' counsel have had oral communications with a number of present and former Braidwood site employees. In light of the serious claims involving harassment and intimidation of such site employees, Intervenorors are concerned that simply disclosing the existence of such communications with counsel for Intervenorors may subject such persons to reprisal or fear of reprisal which, at the least, may have a chilling effect on their willingness to cooperate with Intervenorors and participate in this proceeding. Intervenorors object to describing such oral communications with counsel since such communications are not discoverable. Applicant can interview such persons itself to obtain the same information.

The following oral communications are identified in which counsel for Intervenorors participated:

- | | |
|---------------------|-------------------|
| 1. July 9-14, 1985 | John D. Seeders |
| 2. July 9, 10, 1985 | Worley O. Puckett |

3. July 9, 1985	Lee Hornberger
4. July 15, 1985	Frank Martorana
5. July 24, 30, 1985	L.G. McGregor
6. July 14, 29, 1985	Dan Holley
7. July 29, 1985	Richard Snyder
8. July 30, 1985	Tim Stewart
9. July 31, 1985	Herschel Stout
10. August 1, 1985	R.D. Hunter

As represented in our August 2, 1985, Motion For Confidential Treatment of Eleven QC Inspector Names, counsel for Intervenors communicated with each of the sixteen Comstock QC inspectors who were identified in the April 5, 1985, NRC memo attached to our July 15, 1985, supplemental filing. We object to the disclosure of the names or identifying information regarding persons who have not consented to such disclosure. Applicant has agreed to protection of such information on an interim basis pending agreement on or other resolution of Intervenors' request for protective orders providing such confidentiality.

On May 17 and 24, 1985, counsel had oral communications with an unknown person who had knowledge of facts relevant to the amended QA contention. Intervenors object to describing such communication since a description may serve to identify this person who clearly desired and sought anonymity. The nature of the communication persuades Intervenors that the person has a legitimate interest in remaining anonymous.

Q2: Identify the documents in your possession prior to the admission of the contention which refer or relate to each subpart of the contention and identify each person supplying you with each such document.

A2: The pleadings and exhibits previously served upon Applicant and filed in this proceeding refer or relate to the contention. The documents identified as exhibits to these pleadings were supplied by the NRC Staff in the case of inspection report, by the Court Reporter in the case of the Keppler-Warnick Deposition and the Keppler Byron testimony, the Chicago Tribune in the case of the article quoting Mr. Keppler, and by Applicant in the case of the several Commonwealth Edison documents. Other documents consist of attorney work product and attorney-client privileged materials the identification and production of which is objected to. In addition, counsel for Intervenor received documents believed to be from the anonymous individual referred to in Interrogatory 1, above. Intervenor declines to describe or produce such documents since they would likely provide identifying information which would compromise this individual's anonymity.

Q3: Identify each individual and organization with "quality assurance expertise" whom you have consulted concerning Braidwood and identify each document which refers or relates to such consultation.

A3: Intervenors object to disclosing the identities of or substantive communication from the persons with QA expertise referred to, where none of these persons are, at present, expected to be called as witnesses at trial. 10 CFR §2.740(b)(2); Rule 26 (b)(4), Federal Rules of Civil Procedure.

Q4: Define the word "breakdown" as it is used in the contention.

A4: Intervenors employ the word "breakdown" as a term of art with the same meaning as is attached to the word by the NRC as, for example, in 10 CFR Section 50.55(e) and in the Atomic Safety and Licensing Appeal Board decision in the Callaway case, ALAB 740, 18 NRC 343 (1983).

Q5: For each subpart of the contention describe the corrective action which has been or is being implemented to correct the deficiency described therein.

A5: Intervenors answered this question with respect to corrective action regarding each deficiency cited in each subpart of the contention in our August 1, 1985, Response to the NRC Staff's July 12, 1985 Interrogatories. We reiterate such answers at this time. Such answers were provided in response to Interrogatories 3, 4, 8, 9, 12, 13, 16, 17, 22, 23, 26, 27, 30, 31, 34, 35, 38, 39, 42, 43, 46, 47, 50, 51.

Q6: For each corrective action identified in answer to Interrogatory 5, state whether you believe the corrective action has been or will be, if implemented in accordance with its description, effective in rectifying the specified quality assurance deficiency. If your answer is negative, describe fully the particulars in which the corrective action is asserted to be ineffective, the basis for each such assertion and identify all documents which refer or relate to your answer.

A6: Intervenors answered this question with respect to corrective action regarding each deficiency cited in each subpart of the contention in our August 1, 1985, Response to the NRC Staff's July 12, 1985 Interrogatories. We reiterate such answers at this time. Such answers were provided in response to Interrogatories 3, 4, 8, 9, 12, 13, 16, 17, 22, 23, 26, 27, 30, 31, 34, 35, 38, 39, 42, 43, 46, 47, 50, 51.

Q7: State whether you will contend at the hearing that the specific factual occurrences set forth in the contention exhibit an asserted pattern of quality assurance deficiencies on any common basis other than the specified criterion of 10 CFR Part 50, App. B set forth in the contention. If so, describe each such common basis for an asserted pattern of quality assurance deficiencies and identify any documents which refer or relate to such common basis.

A7: This interrogatory appears to seek the disclosure of the legal opinions or theories of Intervenor's counsel and, as such, it is objectionable as addressed to privileged attorney work product. It also prematurely would require Intervenor to take a position on such legal theories before we have had an adequate opportunity in discovery to ascertain evidence of common bases and patterns. Even at this stage, however, evidence of such patterns and common bases have been identified, for example, by NRC Regional Administrator James G. Keppler who observed that such serious deficiencies were a product of Applicant's management being "spread thin at the top." February 1, 1984, Chicago Tribune, "Will County A-Plant Faulted - 'Worse' Than Byron."

Q8: Define the words harassment, intimidation, retaliation and discrimination as used in the Joint Stipulation on Quality Control ("QC") Inspector Harassment Contention ("Joint Stipulation").

A8: The terms harassment, intimidation, retaliation and discrimination as used in the contention, collectively represent policies, practices, acts or omissions by Commonwealth Edison or its contractors intended to or having the effect of impeding, interfering with, or improperly influencing the performance of quality assurance duties by Braidwood site employees. Such conduct includes discrimination as defined and

prohibited under the Employee Protection provisions of the Energy Reorganization Act, 42 USC Section 5851 and 10 CFR Section 50.7, and pressure to sacrifice quality and safety interests out of cost and schedule considerations.

Q9: Describe each instance of (A) harassment and (B) intimidation either (1) carried out or (2) participated in by Irv DeWald, Larry Seese, Bob Seltman and R.M. Sakalac and for each such instance:

- a. identify the QC inspector or other Comstock employee allegedly harassed or intimidated;
- b. identify the Comstock supervisor involved;
- c. describe the quality or safety concern expressed by the QC inspector or other Comstock employee;
- d. state whether the quality or safety concern was resolved and if so, describe its resolution;
- e. state the date of each such instance; and
- f. identify documents which refer or relate to each such instance.

A9: Intervenors decline to identify any person who has not consented to the disclosure of his or her identity and likewise, decline to disclose any information which might tend to permit the identification of such persons. Intervenors moved for the entry of a protective order on July 12, 1985, to protect the confidentiality of persons with knowledge of

harassment evidence. On August 2, 1985, Intervenors moved for confidential treatment of the names of eleven (11) Comstock QC inspectors at their request. Such motions remain pending and in the interim Applicant has agreed to the non-disclosure of such identifying information.

1. a. John D. Seeders
b. Sakalac, Seltman, Seese, DeWald
c. complained about harassment in connection with his QC duties as described in his August 17, 1984 letter
d. not resolved
e. in August 1984, subsequently involuntarily transferred out of Q.C.
f. August 17, 1984 letter
2. a. Worley O. Puckett
b. Marino, DeWald
c. improper construction procedures, improper qualification of welders, material traceability deficiencies; recommended complete stop work order for all welding activity
d. not resolved
e. May-August 1984
f. see, documents attached to July 12, 1985, Motion To Admit Claims of Intimidation and Harassment of Comstock Quality Control (QC) Inspectors

3.
 - a. Rick Snyder
 - b. Sakalac
 - c. refused to close out inspection document with open engineering change notice
 - d. March 28, 1985
 - e. not resolved
 - f. April 5, 1985 NRC Memo
4.
 - a. Inspector "I"
 - b. John Walters, Ken Worthington
 - c. told he'd be discriminated against if he did not produce more inspections; work with blinders on
 - d. unknown
 - e. not resolved
 - f. April 5, 1985 NRC Memo
5.
 - a. R.D. Hunter
 - b. more than one supervisor
 - c. more than a little bit of intimidation
 - d. unknown
 - e. not resolved
 - f. April 5, 1985 NRC Memo
6.
 - a. Inspector "II"
 - b. Sakalac, other Comstock management
 - c. told to finish an inspection even though drafting errors noted
 - d. not resolved

6. e. November 5, 1984
f. April 5, 1985 NRC Memo
7. a. Inspector "III"
b. John Walters, Daryl Landers
c. observed base metal reduction; Walters told him not to worry; Landers said to keep production up
d. unknown
e. unknown
f. April 5, 1985 NRC Memo
8. a. Herschel Stout
b. unknown
c. production overrides quality
d. not resolved
e. unknown
f. April 5, 1985 NRC Memo
9. a. Inspector "IV"
b. unknown
c. quantity first, not quality
d. not resolved
e. unknown
f. April 5, 1985 NRC Memo
10. a. Inspector "V"
b. Sakalac, DeWald
c. Sakalac berates inspectors; DeWald has discriminated against many inspectors; attitude is "how can I hang you"

10.
 - d. not resolved
 - e. unknown
 - f. April 5, 1985 NRC Memo
11.
 - a. Inspector "VI"
 - b. Sakalac
 - c. Sakalac lied to get him fired; Sakalac used forms contrary to procedure; constantly being watched; involuntarily transferred after visiting NRC office
 - d. not resolved
 - e. unknown
 - f. April 5, 1985 NRC Memo
12.
 - a. Inspector "VII"
 - b. unknown
 - c. hangers not inspected, just as-built; no inspection report or nonconformances written; walkdowns done, drawings made to show as-built configuration
 - d. not resolved
 - e. unknown
 - f. April 5, 1985 NRC Memo
13.
 - a. Inspector "VIII"
 - b. unknown
 - c. more money for more certifications; can't remain proficient in all areas; quality goes down

- 13.
 - d. not resolved
 - e. unknown
 - f. April 5, 1985 NRC Memo
- 14.
 - a. Dan Holley
 - b. unknown
 - c. Sam Russman both QC inspector and auditor - conflict of interest
 - d. unknown
 - e. unknown
 - f. April 5, 1985 NRC Memo
- 15.
 - a. Inspector "IX"
 - b. Sakalac
 - c. told IX to close out ICR's without going through engineering; Sakalac threatened him; "I can put you in the vault;"

Inspector IX says that everyone knows about Sakalac, but nothing is ever done. Tells me what to do though not certified; isn't qualified; just done to get the paper work complete
 - d. not resolved
 - e. unknown
 - f. March 29, 1985 NRC Memo
- 16.
 - a. "another individual"
 - b. Sakalac

16. c. knows of at least 5 guys Sakalac has jumped on; nothing gets done; telling inspectors what to do when he's not certified in area; railroaded John out; new leads in who can't answer questions in their areas but will sign off NCR's or ICR's without appropriate disposition; told to keep numbers of NCR's and ICR's down; interested in numbers and not quality; wrote up guy who didn't have enough numbers; Quality First program sucks, hasn't done a damn bit of good; threw me out of inspecting cable pans - too many NCR's; engineers signed off - no problem. Out of 100 hangers last week all but one or two no good. Supervisor wanted me to close out several ICR's - not certified in my area. Sakalac pressured me to close them out; going to weed out inspectors based on production, not quality.
- d. not resolved
- e. unknown
- f. March 29, 1985 NRC Memo
17. a. "individual"
- b. Sakalac
- c. new people just closing out documents without inspections; afraid of Sakalac; no training; complained to CEC0 about "use as is" disposition

17. c. (cont.) of NCR's to avoid re-work; one person completed 93 hangers with 1,114 welds in one day; improper QA auditing
- d. not resolved
- e. unknown
- f. March 29, 1985 NRC Memo
18. a. Inspector A
- b. unknown
- c. new hires will complete paperwork; "get the job done"
- d. not resolved
- e. unknown
- f. March 29, 1985 NRC Memo
19. a. Inspector B
- b. unknown
- c. in 15 years of inspecting, first nuclear job where quantity first, not quality
- d. not resolved
- e. unknown
- f. March 29, 1985 NRC Memo
20. a. Inspector C
- b. Sakalac
- c. gave up lead position because of intimidation; Sakalac uses extreme profanity; attitude is how can I hang you not help you
- d. not resolved

- 20.
 - e. unknown
 - f. March 29, 1985 NRC Memo
- 21.
 - a. Inspector D
 - b. Sakalac
 - c. no overtime unless production increased;
Sakalac threatened inspector to sign off ICR
 - d. not resolved
 - e. unknown
 - f. March 29, 1985 NRC Memo
- 22.
 - a. Inspector E
 - b. unknown
 - c. intimidation far worse than one supervisor
or lead
 - d. not resolved
 - e. unknown
 - f. March 29, 1985 NRC Memo
- 23.
 - a. Inspector F
 - b. Sakalac
 - c. many run-ins with Sakalac; demanded he write
up electrician or lose qualification
 - d. not resolved
 - e. unknown
 - f. March 29, 1985 NRC Memo
- 24.
 - a. Inspector G
 - b. unknown
 - c. being watched; they are keeping book so they
can fire me

- 24. d. not resolved
- e. unknown
- f. March 29, 1985 NRC Memo
- 25. a. all inspectors present
- b. unknown
- c. quantity first, quality work or inspections
were secondary
- d. not resolved
- e. unknown
- f. March 29, 1985 NRC Memo

Q10: Describe each effect of Mr. Sakalac's alleged harassment which remains uncorrected, identify each person on whom each such effect has operated and identify all documents which refer or relate to each effect.

A10: The effect of the widespread harassment misconduct by Mr. Sakalac is to undermine the integrity of all of the inspection work performed by those who worked under his supervision or subject to his influence. All inspection documents executed by such persons are suspect.

Q11: Identify each of the "more than 25" Comstock QC inspectors referred to at page 4 of the Joint Stipulation dated July 12, 1985.

A11: The identities of the more than 25 Comstock QC inspectors who complained to the NRC since at least August 1984,

are not specifically known to Intervenors. We are informed of such a fact but not of the names of each of the inspectors. According to the NRC, 24 inspectors complained of harassment on March 29, 1985. See, April 5, 1985, NRC Memo at page 2. As detailed above in answer to Interrogatory 9, Intervenors object to disclosing the names of any such persons who have not consented to the disclosure of such identifying information. Of the 16 names known to Intervenors we have disclosed 5 names with consent.

Q12: Identify each and every person who you intend to call as a witness at the hearing in this matter on the contention, and with respect to each such person:

- a. Describe the witness' education and professional background.
- b. State the substance of the facts and opinions to which the witness is expected to testify;
- c. Give a summary of the grounds for each opinion; and
- d. Identify all documents which form the basis for each opinion.

A12: Intervenors have not at present identified any person intended to be called as witnesses in the proceeding except as previously noted in our July 12, 1985, Motion To Admit Claims of Intimidation and Harassment of Comstock Quality Control (QC) Inspectors. However, pursuant to 10 CFR §2.740(e)

Intervenors intend to seasonably supplement this response as required.

Q13: State the full name, address, occupation and employer of each person answering the interrogatories or assisting in the preparation of such answers, and designate the interrogatory or the part thereof he or she answered.

A13: These interrogatories are being answered by the undersigned counsel for Intervenors. No consultants or other advisors are relied upon for such answers.

DATED: August 16, 1985

Respectfully submitted,

Nancy Hiestick for Robert Guild

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One of the Attorneys for
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CERTIFICATE OF SERVICE

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I hereby certify that I have served copies of Response to Applicant Commonwealth Edison Company's First Set of Quality Assurance Interrogatories and Requests To Produce Documents Directed to Intervenor Bridget Little Rorem, Et Al. and Motion For Protective Order on each of the parties listed on the attached Service List, by having said copies placed in envelopes, properly addressed and postaged, and deposited in the U.S. mail at 109 North Dearborn, Chicago, IL 60602, this 16th day of August, 1985; except that Mr. Miller, counsel for Edison, was served by personal delivery at the offices of Isham, Lincoln & Beale.

Dan W. Campbell

BRAIDWOOD SERVICE LIST

50-456/50-457 OL

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