

September 4, 1985 DOCKETED  
 USNRC

UNITED STATES OF AMERICA  
 NUCLEAR REGULATORY COMMISSION

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BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF SECRETARY  
 DOCKETING SERVICE  
 BRANCH

In the Matter of: )

COMMONWEALTH EDISON COMPANY )

(Braidwood Nuclear Station,  
 Units 1 and 2) )

Docket Nos. 50-456 OL  
 50-457 OL

INTERVENORS' MOTION FOR CONFIDENTIAL TREATMENT  
 OF PROSPECTIVE QUALITY ASSURANCE WITNESSES

Intervenors Bridget Little Rorem, et al., by their under-  
 signed counsel, hereby move as directed by the Board at the July  
 23, 1985, prehearing conference for an order providing for the  
 confidential treatment of identifying information regarding  
 prospective witnesses on Intervenors' Quality Assurance conten-  
 tion and for the entry of a protective order limiting the dis-  
 closure of such identifying information during the course of this  
 litigation. Such orders are sought on the grounds that such  
 protection is needed "to encourage those with knowledge of pos-  
 sible safety-related deficiencies in facility construction or  
 operation to put their information before the Commission." Texas  
Generating Company, et al., (Comanche Peak Steam Electric  
 Station, Units 1 and 2), ALAB-714, 17 NRC 86 at 92 (1983).

Although the parties, by agreement, have recently sought  
 deferral of the close of discovery and the identification of  
 witnesses by a period of about 30 days to account for delays in

Applicant's and Staff's responses to Intervenor's discovery requests, Intervenor present this motion for confidential treatment of prospective witnesses at this time in order that a timely resolution of this matter may permit discovery and hearing preparation to proceed subject to such confidentiality protections. It is understood by the parties that Intervenor seek such confidential treatment at this time for the eleven (11) present and former L.K. Comstock Quality Control inspectors who sought such protection in Intervenor's Motion for Confidential Treatment of Eleven QC Inspector Names filed August 2, 1985; but that such protection, if granted, be available as may be necessary for other prospective witnesses to be identified by Intervenor at a later date as provided in the parties' proposed revised schedule. In addition, Intervenor have filed this date a Motion To Compel Discovery From Applicant and the NRC Staff which seeks, inter alia, access to prospective witnesses employed by Applicant or Braidwood site contractors, Motion, pp. 9-15. Intervenor's ability to communicate with these prospective witnesses has been hampered by Applicant's refusal to provide the home addresses and telephone numbers of these persons and Applicant's insistence that Intervenor's contact be channeled through the company's Braidwood site address and telephone number. Intervenor anticipate that an order compelling free access to site employees will permit the identification of further prospective witnesses who may seek confidential treatment.

Intervenor have previously filed a number of pleadings which provide, in part, the factual and legal basis for the

relief sought. In their May 24, 1985, Motion To Admit Amended Quality Assurance Contention, Intervenor initially raised claims of harassment and intimidation of Braidwood site employees for expression of safety and quality concerns in violation of 10 CFR §50.7. Motion, pp. 22-24. On July 12, 1985, Intervenor filed their Motion To Admit Claims of Intimidation and Harassment of Comstock Quality Control (QC) Inspectors and Motion For Protective Order. On July 15, 1985, Intervenor supplemented their July 12 filing with the newly-discovered NRC Region III memoranda reflecting harassment and intimidation complaints to the NRC by some 24 Comstock QC inspectors. Then, as directed by the Board at the July 23, 1985, prehearing conference, Tr. 261, and upon the request of eleven specified present or former Comstock QC inspectors, Intervenor filed their August 2, 1985, Motion For Confidential Treatment of Eleven QC Inspector Names. Finally, on August 16, 1985, Intervenor filed their Response to Applicant's interrogatories and Motion For Protective Order which requested confidential treatment for the identities of the eleven Comstock QC inspectors sought by Applicant in discovery.

In the interests of brevity Intervenor only summarize, here, the factual claims of harassment and fear of reprisal which form the basis for the confidentiality protection sought.

1. Comstock QC Inspector John D. Seeders complained of harassment by Comstock management by letter of August 17, 1984, to the NRC, Edison and Comstock. More than 25 Comstock QC inspectors joined Seeders in September 1984 in complaints of widespread harassment by Comstock management. In retaliation for

such complaints to the NRC, Seeders was threatened with termination and involuntarily transferred to a less sensitive Engineering Clerk position. In communications with Intervenor's counsel, Seeders agreed to provide a sworn statement reflecting his discussions with at least 10 other Comstock inspectors who had knowledge of harassment and intimidation and were willing to testify to such knowledge if they were provided protection from feared retaliation. Seeders affirmed the statements contained in the unsigned Affidavit of John D. Seeders, Exhibit A to Intervenor's July 12, 1985, Motion. Subsequently, Mr. Seeders himself has become fearful that he will be fired by Comstock management or at the direction of Commonwealth Edison Company if he takes any further voluntarily affirmative steps in this proceeding, including executing the affidavit he previously authorized and approved verbatim. Notwithstanding advice that any such discrimination against a person who participates or gives evidence in an NRC proceeding is prohibited by federal statute and NRC regulations, Mr. Seeders persists in his fear that his cooperation will be met with reprisal. As recently as August 31, 1985, Mr. Seeders informed counsel for Intervenor that he was afraid that he would be fired if he signed the unexecuted Affidavit prepared for him and previously filed. At the same time, Mr. Seeders again confirmed the truthfulness of the Affidavit and his willingness to tell the truth if compelled to testify by subpoena. He stated his firm belief, however, that he would be fired and would never work in the nuclear industry again if he voluntarily participated further in this proceeding.

See, July 12, 1985, Motion.

2. Former Level III Comstock QC Inspector Worley O. Puckett was harassed and discriminated against by Comstock management for his expression of safety and quality concerns including numerous instances of improper construction procedures, improper qualification of welders, and material traceability deficiencies. Mr. Puckett had been hired explicitly to review the Comstock QA program. He ultimately recommended a complete stop work order for all welding activity because of widespread deficiencies. Mr. Puckett was terminated by senior Comstock management in retaliation for his expression of quality and safety concerns. On November 6, 1984, the U.S. Department of Labor Area Director sustained Mr. Puckett's complaint of unlawful discrimination by Comstock in violation of the employee protection provisions of the Energy Reorganization Act, 42 USC §5851. See, July 12, 1985, Motion.

3. On March 29, 1985, a total of 24 Comstock QC inspectors complained to the NRC of numerous instances of harassment and technical concerns including threats of physical violence by a Comstock supervisor and serious programmatic concerns that quality was sacrificed to quantity under the Comstock QA program. One inspector stated that he had been retaliated against for talking to the NRC, another apparent act of discrimination in violation of 42 USC §5851. See, July 15, 1985, Supplement.

4. As directed by the Board, after the July 23, 1985, prehearing conference counsel for Intervenors communicated with

each of the 16 Comstock QC inspectors identified in the April 5 NRC Memorandum attached to the July 15 filing. Counsel provided each inspector with an explanation of the nature of the proceedings, the circumstances under which their names became known to Intervenor, the Board's decision on Applicant's request for disclosure of their names, and the availability and significance of various measures to limit the disclosure of their identities under a protective order which Intervenor could seek. We also discussed with them the likely extent of disclosure already occurring and the protections flowing from public identification as participants in this NRC proceeding. Eleven of the sixteen inspectors requested confidential treatment of their names and have asked Intervenor to seek a protective order providing for the maximum protection available even where absolute confidentiality could not be secured. Each expressed fear of reprisal or discrimination ranging from termination or blacklisting from future nuclear industry employment to unfavorable work assignments and harassment.

The record already available reflecting complaints of harassment, discrimination and fear of reprisal among Comstock QC inspectors amply supports the grant of a protective order providing for confidential treatment of identifying information. Houston Lighting and Power Company, et al., (Smith Texas Project, Units 1 and 2), LBP-80-11, 11 NRC 477 (1980); Houston Lighting and Power Company, (Allens Creek Nuclear Generating Station, Unit 1), ALAB-535, 9 NRC 377 (1979).

The protective order to be issued by the Board should provide for limited disclosure of names and identifying information strictly on a "need to know" basis as required for participation by a party in the proceeding. Disclosure of such protected information should be limited to persons who have executed Affidavits of Non-Disclosure which Affidavits would be filed with the Board and available to the parties. A comparatively elaborate form of protective order and affidavit of non-disclosure was approved by the Commission with regard to security plan information in the Diablo Canyon proceeding. Pacific Gas and Electric Company, (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-80-24, 11 NRC 775 (1980). A copy of the Diablo Canyon Protective Order and Affidavit of Non-Disclosure are attached hereto. Intervenor's submit that a less elaborate order and affidavit which include the principal elements of protection would effectively meet the needs for confidential treatment here. Intervenor's would undertake to negotiate the contents of such an order and affidavit with the other parties if this motion is granted.

Finally, intervenor's note that the confidentiality protections sought at this time concern only the treatment of such information during the present discovery phase of these proceedings. For example, decision on the possible necessity (if any) for in camera evidentiary hearings is premature and speculative at this time. Confidentiality in any form during the evidentiary phase may well not be required, depending on, for example, which prospective witnesses are in fact called to testify, what stipu-

lations if any have been agreed upon, the then current needs of potential witnesses, and other circumstances then prevailing. There is no present need to speculate about such future circumstances in order to provide for confidential treatment during the present discovery phase.

WHEREFORE, Intervenor respectfully move for an order providing for the confidential treatment of prospective witnesses and a protective order limiting disclosure of identifying information as herein described.

DATED: September 4, 1985

Respectfully submitted,

Robert Guild (owc)  
Robert Guild  
One of the Attorneys for  
Intervenors Rorem, et al.

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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING APPEAL BOARD

Richard S. Salzman, Chairman  
Dr. W. Reed Johnson  
Thomas S. Moore

In the Matter of )

PACIFIC GAS AND ELECTRIC COMPANY )

(Diablo Canyon Nuclear Power Plant, )  
Units 1 and 2) )

Docket Nos. 50-275 OL  
50-323 OL

PROTECTIVE ORDER ON SECURITY PLAN INFORMATION

Counsel and witnesses for Intervenor San Luis Obispo Mothers for Peace (Intervenor) who have executed an Affidavit of Non-Disclosure, in the form attached, shall be permitted access to "protected information"<sup>\*</sup> upon the following conditions:

1. Only Intervenor's counsel and Intervenor's experts who have been qualified in accordance with the requirements of our decision in Pacific Gas & Electric Company (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-410, 5 NRC 1398 (1977), and our Order of February 25, 1980 in this proceeding, may have access to protected information on a "need to know" basis.

<sup>\*</sup>/ As used in this order, "protected information" has the same meaning as used in the Affidavit of Non-Disclosure, annexed hereto.

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2. Counsel and experts who receive any protected information (including transcripts of in camera hearings, filed testimony or any other document that reveals protected information) shall maintain its confidentiality as required by the annexed Affidavit of Non-Disclosure, the terms of which are hereby incorporated into this protective order.

3. Counsel and experts who receive any protective information shall use it solely for the purpose of participation in matters directly pertaining to this security plan hearing and any further proceedings in this case directly involving security matters, and for no other purposes.

4. Counsel and experts shall keep a record of all protected information in their possession and shall account for and deliver that information to the Commission official designated by this Board in accordance with the Affidavit of Non-Disclosure that they have executed.

5. In addition to the requirements specified in the Affidavit of Non-Disclosure, all papers filed in this proceeding (including testimony) that contain any protected information shall be segregated and:

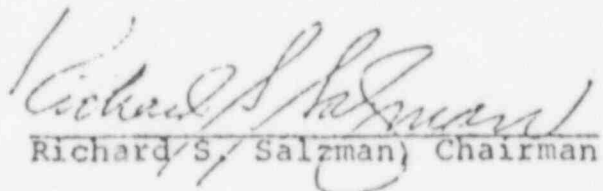
- (a) served on lead counsel and the members of this Board only;
- (b) served in a heavy, opaque inner envelope bearing the name of the addressee and the statement "PRIVATE."

TO BE OPENED BY ADDRESSEE ONLY." Addressees shall take all necessary precautions to ensure that they alone will open envelopes so marked.

6. Counsel, experts or any other individual who has reason to suspect that documents containing protected information may have been lost or misplaced (for example, because an expected paper has not been received) or that protected information has otherwise become available to unauthorized persons shall notify this Board promptly of those suspicions and the reasons for them.

It is so ORDERED.

FOR THE APPEAL BOARD

  
Richard S. Salzman, Chairman

Done at San Luis Obispo, California,  
this 3rd day of April, 1980.

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING APPEAL BOARD

\_\_\_\_\_  
In the Matter of )  
 )  
PACIFIC GAS AND ELECTRIC COMPANY )  
 )  
(Diablo Canyon Nuclear Power Plant, )  
Units 1 and 2 )  
\_\_\_\_\_ )

Docket Nos. 50-275 OL  
50-323 OL

AFFIDAVIT OF NON-DISCLOSURE

I, \_\_\_\_\_, being duly sworn, state:

1. As used in this Affidavit of Non-Disclosure,

(a) "Protected information" is (1) any form of the physical security plan for the licensee's Diablo canyon Nuclear Power Plant, Units 1 and 2; or (2) any information dealing with or describing details of that plan.

(b) An "authorized person" is (1) an employee of the Nuclear Regulatory Commission entitled to access to protected information; (2) a person who, at the invitation of the Atomic Safety and Licensing Appeal Board ("Appeal Board"), has executed a copy of this affidavit; or (3) a person employed by Pacific Gas and Electric Company, the licensee, and authorized by it in accordance with Commission regulations to have access to protected information.

2. I shall not disclose protected information to anyone except an authorized person, unless that information has previously been disclosed in the public record of this proceeding. I will safeguard protected

information in written form (including any portions of transcripts of in camera hearings, filed testimony or any other documents that contain such information), so that it remains at all times under the control of an authorized person and is not disclosed to anyone else.

3. I will not reproduce any protected information by any means without the Appeal Board's express approval or direction. So long as I possess protected information, I shall continue to take these precautions until further order of the Appeal Board.

4. I shall similarly safeguard and hold in confidence any data, notes, or copies of protected information and all other papers which contain any protected information by means of the following:

- (a) my use of the protected information will be made at a facility in San Francisco to be made available by Pacific Gas and Electric Company.
- (b) I will keep and safeguard all such material in a safe to be obtained by intervenors at Pacific Gas and Electric Company's expense, after consultation with Pacific Gas and Electric Company and to be located at all times at the above designated location.
- (c) Any secretarial work performed at my request or under my supervision will be performed at the above location by one secretary of intervenor's designation. Intervenors shall furnish Pacific Gas and Electric Company, the Board and Staff an appropriate resume of the secretary's background and experience.
- (d) Necessary typing and reproduction equipment will be furnished by Pacific Gas and Electric Company.
- (e) All intervenor mailings involving protected information shall be made from the facility furnished by Pacific Gas and Electric Co.

5. If I prepare papers containing protected information in order to participate in further proceedings in this case, I will assure that any secretary or other individual who must receive protected information in order to help me prepare those papers has executed an affidavit like this one and has agreed to abide by its terms. Copies of any such affidavit will be filed with the Appeal Board before I reveal any protected information to any such person.

6. I shall use protected information only for the purpose of preparation for this proceeding or any further proceedings in this case dealing with security plan issues, and for no other purpose.

7. I shall keep a record of all protected information in my possession, including any copies of that information made by or for me. At the conclusion of this proceeding, I shall account to the Appeal Board or to a Commission employee designated by that Board for all the papers or other materials containing protected information in my possession and deliver them as provided herein. When I have finished using the protected information they contain, but in no event later than the conclusion of this proceeding, I shall deliver those papers and materials to the Appeal Board (or to a Commission employee designated by the Board), together with all notes and data which contain protected information for safekeeping during the lifetime of the plant.

8. I make this agreement with the following understandings:

(a) I do not waive any objections that any other person may have to executing an affidavit such as this one; (b) I will not publicly discuss or disclose any protected information that I receive by any means whatever.

Subscribed and sworn to before me this

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day of April, 1980

9/4/85

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of:	)	
	)	
COMMONWEALTH EDISON COMPANY	)	Docket No. 50-456
	)	50-457
(Braidwood Nuclear Power	)	
Station, Units 1 and 2)	)	

CERTIFICATE OF SERVICE

I hereby certify that I have served copies of Intervenor's Motion For Confidential Treatment of Prospective Quality Assurance Witnesses on all parties to this proceeding listed on the attached Service List, by having said copies placed in envelopes, properly addressed and postaged (first class), and deposited in the U.S. mail at 109 North Dearborn, Chicago, Illinois, on this 4th day of September, 1985; except that Administrative Judge Grossman was served via Federal Express "ZAP" mail (same day delivery); Administrative Judges Brenner, Cole, and Callihan, and NRC Staff Counsel Elaine Chan were served via Federal Express (overnight delivery); and Edison counsel Michael Miller was served personally, also on September 4, 1985.

Douglas W. Long



BRAIDWOOD SERVICE LIST

50-456/50-457 OL

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