

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of  
UNION ELECTRIC COMPANY  
(Callaway Plant, Unit 1)

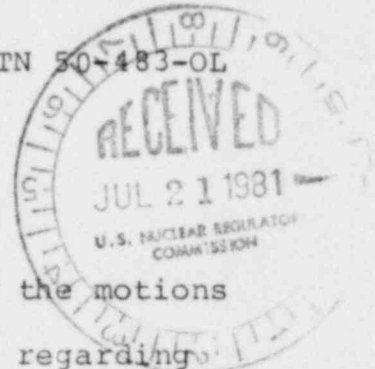
)  
)  
) Docket No. STN 50-483-OL  
)  
)

JOINT INTERVENORS' MEMORANDUM  
IN OPPOSITION TO MOTIONS TO COMPEL

This memorandum is submitted in response to the motions to compel filed by both the Applicant and NRC Staff regarding Joint Intervenor's objection No. 1, served June 22, 1981. In that objection Joint Intervenor's object to identifying persons having first hand knowledge of the basis for their contentions and persons who participated in answering interrogatories. It must be noted that Joint Intervenor's do not know the identities of all of the people with first hand knowledge of the bases for their contentions and people who participated in answering interrogatories. Much of the factual information which provided the bases for contentions and the answers to interrogatories was provided second hand to the Intervenor's.

Despite the language of 10 C.F.R. §2.740(b)(1), Joint Intervenor's contend that sufficient reasons exist to sustain their objection and deny the subject motions to compel.

First, the Applicant and NRC Staff clearly have far greater access to persons with knowledge of facts regarding the bases of Joint Intervenor's contentions than do the Intervenor's. The only contention about which first hand knowledge really matters is contention number one, relating to the alleged failure of the



DS03  
1/1

8107 220199 810716  
PDR DOCK 05000483  
PDR

quality assurance program as evidenced, among other ways, by construction defects in the plant. Contention number two deals with the Applicant's alleged inability to assure compliance with applicable environmental standards for radioactive pollution. Joint Intervenors rely and intend to rely almost exclusively on existing documentation from Applicant and the NRC to substantiate their allegations. Thus, the need for identification of these people is minimal.

Second, the people of whom Joint Intervenors are aware, either having first hand knowledge or assisting in answering interrogatories, would face the possibility of reprisals for their activities. Such people (known either to Joint Intervenors or to non-parties) are present and former employees at various levels of the Applicant and its contractors, professional engineers, physicians and scientists, educators, and lay people who have helped Joint Intervenors do research. The history of reprisals against persons whose active opposition to the nuclear power industry has become known is extensive and startling and provides ample basis for denying the Applicant's and Staff's motions to compel.

The most obvious example is the case of William Smart, a construction worker at the Callaway Plant employed by a contractor of the Applicant. The record establishes that Mr. Smart was discharged because of his "whistleblowing" during the early phases of construction of the Callaway Plant.

William Smart is an ironworker who was employed at the Callaway Plant at various times as General Foreman, Foreman and Journeyman by Daniel Construction Co. Mr. Smart was discharged on March 21, 1978, allegedly for disobeying a foreman's order. On numerous occasions prior to his discharge Mr. Smart reported to the NRC what he considered safety-related deficiencies in the construction work at the plant. In the arbitration proceeding pertaining to his discharge the arbitrator held that Daniel "did not sustain its burden of showing that it discharged Mr. Smart for refusal to follow a Foreman's order." (See Arbitrator's Opinions and Award, copy attached hereto as Exhibit A, at p. 13.) The arbitrator found:

. . .even if the record did establish an order communicated and actually defied (about which I entertain some doubt), Mr. Hathcock, the General Foreman who decided upon Mr. Smart's discharge, clearly did not make the decision to discharge Mr. Smart because of that alleged insubordination. (Id. at 10, emphasis in original.)

The arbitrator explained the above finding as follows:

. . .it emerged that soon after Mr. Smart was assigned as a Foreman under Mr. Hathcock's jurisdiction, the latter observed a yellow truck driven by the project's Assistant General Superintendent repeatedly circling the area where Mr. Smart worked. In Mr. Hathcock's opinion, that activity could only have the purpose of keeping Mr. Smart under surveillance, a surveillance unusual for its intensity. In addition, Mr. Hathcock was instructed not to allow Mr. Smart to work in several areas, a situation Mr. Hathcock found hampering to the performance

of his job as a General Foreman. So, he testified that he deduced that Mr. Smart would have to "toe the line pretty close", that Mr. Smart had to be "extra careful" and was in a "special position" because of the allegations Mr. Smart made to the Nuclear Regulatory Commission (although he also testified that Mr. Smith, the Company's Project Personnel Director, told him to treat Mr. Smart the same as anyone else). He testified that no one "ever came right out" and told him to fire Mr. Smart, but quite clearly that is what the sum of the Company's special attention to and restrictions upon Mr. Smart added up to for Mr. Hathcock. The probability that Mr. Hathcock decided to use the incident as an excuse is reenforced by Mr. Hathcock's reference to Company pressure on him about Mr. Smart at the conference with Mr. Cross. So that when the situation arose on March 21, he agreed, he was just as happy to get rid of the headache that Mr. Smart represented and gave the Company the decision he thought it wanted. (Id. at 11.)

In the arbitration proceeding Daniel argued that even if it fired Mr. Smart without just cause, he should not be reinstated because of his "whistleblowing" activities. (Id. at 13-14.)

Following Mr. Smart's discharge, on March 30, 1978 the NRC staff attempted to conduct an investigation to determine whether the discharge was retaliatory. Daniel refused to cooperate with the investigation; refused to allow inspection of relevant personnel records and refused to allow the staff to interview Daniel employees knowledgeable about the discharge. Union Electric was apprised of Daniel's refusal but it failed to instruct Daniel to cooperate with the staff. (See, Union Electric Co., (Callaway Plant, Units 1&2), ALAB-527, Feb 23, 1979, p.3.)

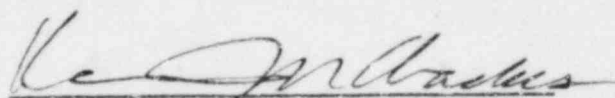
Despite its determination that Mr. Smart's discharge was likely to have a chilling effect on other workers who became aware of construction defects, the NRC did essentially nothing to protect Mr. Smart or assure the protection of others who find themselves in similar situations. (Id.)

Further description of Mr. Smart's situation and other examples are contained in the Affidavit of Kay Drey, attached hereto as Exhibit B.

Therefore, because of the minimal need of the Applicant and NRC Staff for the identity of persons known to Joint Intervenors to have first hand knowledge of the basis for their contentions and persons who participated in answering interrogatories, the possibility of reprisal against such persons, and the basis for legitimate fear of such reprisal, the Board should deny the motions to compel.

Respectfully submitted,

CHACKES AND HOARE



Kenneth M. Chackes  
Attorneys for Joint Intervenors  
314 North Broadway  
St. Louis, MO 63102  
314/241-7961

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	
UNION ELECTRIC COMPANY	)	Docket No. STN 50-483-OL
	)	
(Callaway Plant, Unit 1)	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of Joint Intervenor's Memorandum in Opposition to Motions to Compel have been served on the following by deposit in the United States mail this 16 day of July, 1981.

James P. Gleason, Esq., Chairman  
Atomic Safety and Licensing Board  
513 Gilmore Drive  
Silver Spring, MD 20901

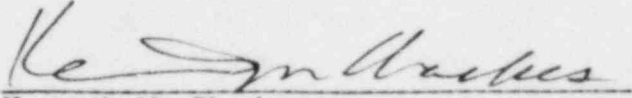
Mr. Glenn O. Bright  
Atomic Safety and Licensing Board Panel  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Dr. Jerry R. Kline  
Atomic Safety and Licensing Board Panel  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Thomas A. Baxter, Esq.  
Shaw, Pittman, Potts & Trowbridge  
1800 M Street, N.W.  
Washington, D.C. 20036

Docketing and Service Section  
Office of the Secretary  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Roy P. Lessy, Jr., Esq.  
Office of the Executive Legal Director  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

  
Kenneth M. Chackes  
CHACKES AND HOARE