

November 8, 1982

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)	)	

APPLICANT'S MOTION TO COMPEL  
DISCOVERY OF INTERVENOR REED

In accordance with the revised schedule agreed upon by the parties, on October 20, 1982 Applicant Union Electric Company filed "Applicant's Revised Interrogatories and Requests for Production of Documents of Intervenor John G. Reed" ("Applicant's Discovery Requests"). On October 27, 1982, Mr. Reed filed "John G. Reed's Objections to Applicant's Revised Interrogatories" ("Reed Objections"), which oppose certain of Applicant's timely discovery requests. In accordance with the Commission's rules of practice, Applicant herein moves to compel responses to its revised interrogatories and requests for the production of documents. 10 C.F.R. § 2.740(f).

Mr. Reed's objections fall into four groups because the bases for a number of Mr. Reed's interrogatory objections are the same. Accordingly, Applicant has similarly grouped its arguments in support of its Motion to Compel. However, before addressing the specific objections raised by Mr. Reed, it is appropriate first to review the oft-cited general principles governing the permissible scope of discovery in NRC adjudicatory proceedings.

Section 2.740(b) of the Commission's regulations states:

Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the proceeding, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter.... It is not grounds for objection that the information sought will be inadmissible at the hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

The scope of discovery repeatedly has been described by the Appeal Board as extremely broad. "In modern administrative and legal practice, pretrial discovery is liberally granted to enable the parties to ascertain the facts in complex litigation, refine the issues, and prepare adequately for a more expeditious hearing or trial." South Carolina Electric and Gas Co. (Virgil C. Summer Nuclear Station, Unit 1), ALAB-642, 13 N.R.C. 881, 888-89 (1981), citing Pennsylvania Power & Light

Co. (Susquehanna Steam Electric Station, Units 1 and 2), ALAB-613, 12 N.R.C. 317, 322 (1980); Pacific Gas and Electric Co. (Stanislaus Nuclear Project, Unit 1), LBP-78-20, 7 N.R.C. 1038, 1040 (1978); Hickman v. Taylor, 329 U.S. 495, 501 (1947). "[U]nless it is 'palpable that the evidence sought can have no possible bearing upon the issues,'" a discovery requests satisfies the Commission's relevancy standard. Commonwealth Edison Co. (Zion Station, Units 1 and 2), ALAB-196, 7 A.E.C. 457, 462 (1974), citing Hercules Powder Co. v. Rohm & Haas Co., 3 F.R.D. 302, 304 (D. Del. 1943). Applicant's entitlement to full discovery is especially important because "[a]pplicants in particular carry an unrelieved burden of proof in Commission proceedings. Unless they can effectively inquire into the positions of the intervenors, discharging that burden may be impossible." Commonwealth Edison Co. (Byron Nuclear Power Station, Units 1 and 2), ALAB-678, 15 N.R.C. \_\_\_, \_\_\_, slip op. at 35 (June 17, 1982), citing Susquehanna, supra, 12 N.R.C. at 338; Northern States Power Co. (Tyrone Energy Park, Unit 1), LBP-77-37, 5 N.R.C. 1298, 1300-01 (1977).

With these guiding principles in mind, Applicant contends that, for the reasons set forth below, it is entitled to responses to the interrogatories and associated document production requests to which Mr. Reed has objected.

Group One: Interrogatories 4, 5, 8 (in part), 20,  
21, 29, 30, 36 and 76

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Mr. Reed objects to interrogatories 4, 5, 20, 21, 29, 30, 36, 76 and the last part of interrogatory 8 because, according to Mr. Reed, these interrogatories "deal[] with matters which are beyond the scope of this hearing which only concerns contentions relating to radiological emergency response planning and activities." Reed Objections at 1. Applicant does not disagree with Mr. Reed's characterization of the scope of this proceeding. However, in Applicant's view, the interrogatories in question clearly are relevant to "radiological emergency response planning and activities."

In carrying out emergency response planning, "the goal is to determine how existing community resources, both private and governmental, can be utilized most effectively in responding to the emergency." Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit No. 1), LBP-81-59, 14 N.R.C. 1211, 1598 (1981). The initial step in striving for this planning goal is to understand whether and, if so, how the needs of the community in a radiological emergency are different from the needs of a community in a non-radiological community. For example, the TMI-1 Licensing Board perceived little difference at the municipal level between planning for radiological emergencies and planning for other emergencies, such as floods. Id. at 1483. From this comparative assessment, it is possible to determine what additional resources, if any, are necessary to implement a radiological emergency plan.

The interrogatories in question, which Mr. Reed finds irrelevant, seek information about the adequacy of local emergency response capabilities in non-radiological emergencies in order to assess (i) the viability of both Mr. Reed's contentions challenging these capabilities in the event of a radiological emergency at the Callaway Plant; and (ii) Licensee's defense that where plan implementation relies on capabilities proven adequate in non-radiological emergencies, these capabilities will be sufficient in a radiological emergency. Thus, the challenged interrogatories relate to both the claims of the intervenor, Mr. Reed, and the defense of the party seeking discovery, Applicant Union Electric Company. See 10 C.F.R. § 2.740(b)(1); Illinois Power Co. (Clinton Power Station, Unit Nos. 1 and 2), ALAB-340, 4 N.R.C. 27, 33 (1976) citing 4 Moore's Federal Practice, 2d ed., ¶ 26.02[4] ("Discovery is available to assist a party to 'obtain adequate factual data in support of his claim or defense....").

In particular, Reed Contention 1 challenges the sufficiency of each local county's Sheriff staff to carry out the functions assigned to it in the Offsite Plan and procedures in the event of a radiological emergency at the Callaway Plant. See Final Particularization of Reed's Amended Contentions 1, 2 and 3, Oct. 1, 1982 ("Reed Contentions") at 4-9. Applicant's interrogatories 4, 5 and the second part of interrogatory 8, to which Mr. Reed objects, seek information about the adequacy of the Sheriff's staff in non-radiological emergencies, and

Sheriff responsibilities which are unique to a radiological emergency, including the alleged need to continue to support all normal functions during a radiological emergency.

Applicant's Discovery Requests at 3, 4. Reed Contention 2 challenges the sufficiency of each local county's Clerk's staff to carry out the functions assigned to it in the Offsite Plan and procedures in the event of a radiological emergency at the Callaway Plant. Reed Contentions at 9-12. Applicant's interrogatories 20 and 21, to which Mr. Reed objects, seek information about the adequacy of the Clerk's staff in non-radiological emergencies, and Clerk responsibilities which are unique to a radiological emergency. Applicant's Discovery Requests at 7-8. Reed Contention 3 maintains the need for a full-time, professional Montgomery, Gasconade and Osage County Emergency Management Director ("EMD"), as well as an alternate EMD, a secretary for the EMD and the elimination of the public information duties assigned to the EMD. Reed Contentions at 13-15. Applicant's interrogatories 29, 30 and 36, to which Mr. Reed objects, seek information about the responsibilities of the EMD in non-radiological emergencies, the ability of the EMD to adequately fulfill these responsibilities in a non-radiological emergency, the necessary capabilities of an EMD in a non-radiological emergency, whether these qualifications are different from the qualifications which the EMD must have to fulfill his responsibilities in a radiological emergency at the Callaway Plant and, if so, why. Applicant's

Discovery Requests at 9, 10. Finally, Reed Contention 15 concerns the necessity for letters of agreement with all local government agencies and private companies that might be relied upon to provide assistance in the event of a radiological emergency at the Callaway Plant. Reed Contentions at 36-37. Applicant's interrogatory 76, to which Mr. Reed objects, asks whether all local government agencies and private companies which have provided assistance during a non-radiological emergency have done so pursuant to letters of agreement and, if not, why Mr. Reed believes such agreements are necessary as part of the emergency planning effort for the Callaway Plant. Applicant's Discovery Requests at 19. All of these interrogatories seek information about existent capabilities proven effective in non-radiological emergencies in order to establish whether the draft Offsite Plan and procedures developed for a radiological emergency at the Callaway Plant are capable of being implemented.

Group Two: Interrogatories 33, 41, 45,  
58, 59, 60, 66, 77, and 90

Mr. Reed poses either exactly the same or very similar objections to Interrogatories 33, 41, 45, 58, 59, 60, 66, 77, and 90. In Mr. Reed's opinion, these interrogatories are objectionable because they call either for a subjective judgment (Interrogatory 33), or for a conclusion and possible resolution (Interrogatories 41, 45, 58, 59, 60, and 90) which, as "part of the planning process which has been undertaken by

Union Electric Company," presumably need not be answered by Mr. Reed (Interrogatories 58, 59, 60, 66, and 77). These related objections fail to satisfy the Commission's pleading requirements and, in any event, are based on a faulty understanding of what inquiries are appropriate for discovery.

"Challenges to interrogatories must be specific enough so that the [tribunal] can understand in what way the interrogatories are claimed to be objectionable. General objections, such as the objection that the interrogatories . . . call for opinions and conclusions, are insufficient." Susquehanna, supra, 12 N.R.C. at 323, citing 4A Moore's Federal Practice (1980 ed.), ¶ 33.27 (at pp. 33-151 and 33-152) (citations omitted); 10 C.F.R. § 2.740(b); Boston Edison Co. (Pilgrim Station, Unit 2), LBP-75-30, 1 N.R.C. 579, 583 (1975).

Each of the interrogatories in question stem directly from the contentions advanced by Mr. Reed and, essentially, seek the bases for or the particulars of these contentions. "A litigant may not make serious allegations against another party and then refuse to reveal whether those allegations have any basis." Susquehanna, supra, 12 N.R.C. at 339; Clinton, supra, 4 N.R.C. at 33; Power Authority of the State of New York (Greene County Nuclear Power Plant), LBP-78-8, Dec. 15, 1978 (unpublished). Furthermore, refinement of the facts at issue is one of the principal purposes of pretrial discovery. See Summer, supra, 13 N.R.C. at 888.

In view of the fact that Mr. Reed's Contention 3 claims that a full-time professional Montgomery, Gasconade and Osage County EMD is necessary to implement the Callaway Plant Offsite Plan, Reed Contentions at 14, Applicant's Interrogatory 33 asks Mr. Reed to specify the EMD's responsibilities, to estimate the amount of time required, on an annual basis, to fulfill these responsibilities, and to provide the basis for the estimate. Applicant's Discovery Requests at 10. While Mr. Reed may be correct that his time estimates "would be based upon [his] capabilities," Reed Objections at 1, Applicant is entitled to know what these estimates are. Contrary to Mr. Reed's assertion, id., these Reed estimates are relevant, although they may not be reasonable, given Mr. Reed's contention that full-time EMDs are necessary.

Mr. Reed's Contention 4 states that the Offsite Plan and the procedures for Montgomery, Gasconade, Osage and Callaway counties "do not include specific actions to be taken by response personnel when they are alerted/notified . . . ." Reed Contentions at 15. Applicant's interrogatory 41 simply asks Mr. Reed what personnel and actions he is referring to which, in his view, are not and should be included in the county procedures. Applicant's Discovery Requests at 11.

Mr. Reed's Contention 6 avers that an inadequate range of protection actions has been developed for local emergency workers and the public within the plume exposure pathway emergency planning zone ("EPZ"). In particular, Mr. Reed

argues that "protective support equipment" or a "thyroid protective . . . device" and "chemical prophylaxis" or "KI" is necessary. Reed Contentions at 18-21. Applicant's Interrogatory 45 asks Mr. Reed to specify the protective equipment, if any, he believes should be distributed, along with the time frame for the distribution and the recipients of the equipment. Applicant's Discovery Requests at 12.

Mr. Reed's Contention 10 states that "[a]rrangements have not been made for medical treatment of local governments' (Montgomery, Gasconade, Osage and Callaway counties) contaminated, injured emergency workers or residents living within the plume exposure EPZ as required by 10 C.F.R., Part 50, Section 50.47(b)(12)" including whether or not selected hospitals "have space and resources to handle the potential volume of patients that may come from a particular county." Reed Contentions at 25. Applicant's interrogatories 58, 59 and 60 ask Mr. Reed to specify the facts which support Contention 10, viz., (i) the hospital space and resources which Mr. Reed contends are necessary to handle the potential volume of patients from the four counties in the EPZ; (ii) what Mr. Reed estimates the potential volume of patients to be and the basis for this estimate; and (iii) whether there are insufficient resources or space at the medical facilities listed in Procedure No. 13 of the county procedures to handle the potential volume of patients from the four counties in the EPZ and, if so, the basis for this conclusion. Applicant's Discovery Requests at 15.

In Contention 13(B), Mr. Reed maintains that procedures are not and ought to be provided for specified cities in the EPZ to indicate how they will function in a radiological emergency response effort. Reed Contentions at 35. Since Applicant is unaware of any resources relied upon from or effort required by these cities, Applicant's interrogatory 66 seeks the basis for this alleged need, viz., the emergency response efforts which require delineation in procedures.

Mr. Reed's Contention 16, concerning the adequacy of public information messages on long-term sheltering, assumes that, "[i]n the event of an accident/release of nuclides, shelter must be considered for as long as two to four days," because "travel in rural areas of all four counties have [sic] been curtailed for days" due to adverse weather conditions, such as "flooding, snow and/or ice on area roads." Reed Contentions at 38. In interrogatory 77, Applicant has asked Mr. Reed to specify the facts which support the need to plan for sheltering for two to four days, viz., to specify, by designation on an area map provided to Mr. Reed (or any other map) the specific area(s) within the Callaway Plant EPZ in which residents might be required to shelter for two to four days because of adverse weather conditions. Applicant's Discovery Requests at 19.

Finally, in view of Mr. Reed's nineteenth contention that contingency measures for resolving potential evacuation impediments are not included in the Offsite Plan or procedures,

Reed Contentions at 40-41, Applicant has asked Mr. Reed in interrogatory 90 what contingency measures he believes should be provided for in the Offsite Plan and procedures. Applicant's Discovery Requests at 22.

Group Three: Interrogatories 74 (in part) and 75

Mr. Reed has objected to Applicant's interrogatory 74, in part, and interrogatory 75 because, in his view, they are frivolous and immaterial. Reed Objections at 2. Such general objections are insufficient. Susquehanna, supra, 12 N.R.C. at 323 citing 4A Moore's Federal Practice (1980 ed.) ¶ 33.27 (at pp. 33-151 and 331-52) (citations omitted); 10 C.F.R. § 2.740(b); Pilgrim, supra, 1 N.R.C. at 583 (insufficiency of the general objection that interrogatories are irrelevant and immaterial). Furthermore, Applicant is not limited to discovering only those facts which are material to Mr. Reed's contentions; all relevant matters, which are not privileged, may be the subject of discovery. 10 C.F.R. § 2.740(b)(1); see generally Susquehanna, supra, 12 N.R.C. at 331-32, n.21; Zion, supra, 7 A.E.C. at 462. Mr. Reed's opinion of the frivolousness of the question is not relevant in evaluating the propriety of the discovery request.

In addition, Applicant disputes Mr. Reed's characterization of the second part of interrogatory 74 and interrogatory 75. Both of the challenged questions are derived directly from Mr. Reed's Contention 15, concerning the need for letters of

agreement with all local government agencies and private companies and, apparently, with all individuals within these organizations that may be relied upon to provide assistance in an emergency. Reed Contentions at 36-37. In the second part of interrogatory 74, Applicant asks Mr. Reed about his knowledge of any situations where individuals' responses during an emergency have been affected by the prior existence of a letter of agreement. Discovery Requests at 18-19. This question is necessary for Applicant to properly assess its and the local counties' planning basis for obtaining some, but not all of the letters of agreement which Mr. Reed would have Applicant and the counties obtain. See Clinton, supra, 4 N.R.C. at 33. In Contention 15, Mr. Reed suggests that without individual letters of agreement, people will be "force[d] to respond to an emergency at the Callaway Plant and, consequently, the Offsite Plan and procedures are in "violation of Articles [sic] XII, Section 1, and Article V of the Constitution of the United States." Reed Contentions at 36-37. Interrogatory 75 simply seeks the factual and legal basis for these claims, viz., who does Mr. Reed believe is forcing individuals to serve radiological emergency functions, and how is the Constitution being violated, including case law supportive of this assertion. Applicant's Discovery Requests at 19. See Susquehanna, supra, 12 N.R.C. at 331-32.

Group Four: Interrogatories 44, 67, 71 and 80

Applicant has grouped the last four miscellaneous objections posed by Mr. Reed although each of these objections is somewhat different.

In order to understand Mr. Reed's objection to Interrogatory 44, it is necessary to consider the interrogatory in question. Applicant's Interrogatory 44 states:

Provide the technical basis for your disagreement with the State of Missouri that distribution of potassium iodide ("KI") is not in the best interest of the public, including emergency workers, on a cost (risk and disadvantages as well as financial)/benefit basis. Specifically address the negatives advanced in "Applicant's Responses to Specified Reed Interrogatories Served on the Callaway Court Administrative Judges and Emergency Management Coordinator," July 23, 1982, Answer to Interrogatory No. 13.

Applicant's Discovery Requests at 12. Mr. Reed objects to this interrogatory because (i) he "is not basing any contention on a cost/benefit basis"; and (ii) he "does not accept" Applicant's July 23, 1982 pleading "as a valid response from the persons on whom it was served; as such it is hear-say [sic] and has no basis in this hearing matter." Reed Objections at 2.

Regardless of whether Mr. Reed's KI contention, Contention 6, is based on a cost/benefit analysis, the fact remains that the State of Missouri has determined that distribution of KI is not in the best interests of the public, considering the costs and benefits which are associated with such distribution. See Missouri Public Service Commission's

Responses to Reed Interrogatory Numbers 9 and 13, July 23, 1982. In view of this position, Applicant is asking Mr. Reed to reconcile his contention with that State position, or to explain why the State's analysis of the KI issue is faulty. Stated another way, Applicant is simply seeking the basis for Mr. Reed's Contention 6, which asserts that KI and/or protective equipment ought to be distributed to the public and emergency workers. Applicant's reference to its previously filed responses to Reed interrogatories is simply a convenient means for Applicant and Mr. Reed to address the pro's and con's of KI distribution. The alleged hearsay status of these responses, even if correct,<sup>1/</sup> is irrelevant. See 10 C.F.R. § 2.740(b)(1) (information sought on discovery need not be admissible at the hearing); Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), ALAB-355, 4 N.R.C. 397, 412 (1976); Commonwealth Edison Co. (Zion Station, Units 1 and 2), ALAB-226, 8 A.E.C. 381, 387 (1974) (hearsay is not grounds for exclusion of testimony in NRC proceedings).

In his objection to Interrogatory 67, Mr. Reed states, "Object, an answer calls for a conclusion based upon how Applicant appears to view a statement made independently of

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<sup>1/</sup> Applicant's answers to the interrogatories posed by Mr. Reed on the Callaway Court et al. are not hearsay because they are not even evidence. Furthermore, Applicant has never represented or intended to suggest in any way that in answering these interrogatories, Applicant presumed to speak for these officials. Rather, Applicant sought to assist Mr. Reed's efforts to obtain the answers to questions by providing answers to questions which Applicant was in a position to know.

actual contentions." Reed Objections at 2. Interrogatory 67 states:

In your deposition, you agreed that the siren system did notify citizens located in each of the incorporated cities listed in Contention 13.B of a radiological emergency at the Callaway Plant. Nevertheless, you appeared to be of the view that letters of agreement between these cities and the county in which each city is located would not be sufficient to ensure protection of individuals located in these cities during a radiological emergency. Please explain the basis for this view.

Applicant's Discovery Requests at 17. Essentially, through this interrogatory, Applicant is attempting to understand Mr. Reed's reasoning in requiring that incorporated cities, towns and villages be "included in the response effort," Reed Contention 14, even though, to Applicant's knowledge, these cities are not relied upon for any emergency response capabilities in the event of a radiological emergency at the Callaway Plant. Mr. Reed's determination to avoid stating the ground for this viewpoint was apparent during the deposition, which is why Applicant stated that Mr. Reed only "appeared" to be of the opinion expressed in Interrogatory 67 -- although asked, Mr. Reed did not directly answer the questions posed to him on this subject. See attached Reed Deposition, Aug. 18, 1982, at 54-65. It is plain that Mr. Reed is required to state the basis for his contentions. See Byron, supra, slip op. at 35; Susquehanna, supra, 12 N.R.C. at 338. Contention 14 proposes emergency response plans for incorporated cities in the EPZ. See Reed Contentions at 35-36. Mr. Reed is now required to state the basis for this contention.

Mr. Reed also objects to Interrogatory 71, in which Applicant asks Mr. Reed to state what emergency response functions will be performed by the incorporated cities, towns and villages which he believes require emergency plans. See Applicant's Discovery Requests at 18. Mr. Reed says, "this question is without basis, since it is possible to envision the relief of all local governmental involvement in radiological emergency response planning, if one eliminates consideration of the provisions of NUREG 0654, I.E. Such a consideration is in contradiction with Commission guidance and policy." Reed Objections at 2. Presumably, then, it is Mr. Reed's view that NUREG-0654 requires plans for incorporated cities, towns and villages. This observation, however, does not make Interrogatory 71 objectionable. Moreover, Mr. Reed's objection misses the mark because Applicant is not interested, here, in Mr. Reed's interpretation of NUREG-0654. Rather, Applicant has asked Mr. Reed whether, and if so, what emergency response functions can only be performed by these small local jurisdictions within the four counties in the EPZ, and not by other organizations or government entities, i.e., what is the substantive basis for Contention 14. Even if Mr. Reed were correct in his interpretation of NUREG-0654, that guidance document also provides that "weaknesses in one organization... [can be] compensated for in another organization." NUREG-0654, Rev. 1 (Nov. 1980), at 24. More fundamentally, Applicant is simply trying to understand whether Mr. Reed has identified a

substantive inadequacy in the Callaway Plant emergency response effort in his Contention 14, or is concerned instead about the political propriety of having local emergency plans implemented in a city or town which are not under the direction of the city mayor or town council but, rather, under the direction and control of the administrators of the county in which the city or town is located. See Bryon, supra, slip op. at 35; Susquehanna, supra, 12 N.R.C. at 338.

Finally, Mr. Reed states as his objection to Applicant's interrogatory 80, that "a person cannot be expected to identify that which he or she does not know to be in existence [sic]." Reed Objections at 3. This facile objection clearly fails to meet the requirement for specific objections to contentions. See Susquehanna, supra, at 323. Nor is Interrogatory 80 unreasonable, as Mr. Reed's objection suggests. In Contention 17.A, concerning radiological monitoring capability, Mr. Reed states, "Also, an inability to communicate with Applicant's EOF or other information collection point may result if methods of communications are not available or known to the organization receiving field monitor reports." Reed Contentions at 39. Applicant seeks only to comprehend what Mr. Reed is referring to, here -- the essence of pretrial discovery. Byron, supra, slip op. at 35; Susquehanna, supra, 12 N.R.C. at 338.

For the reasons stated above, Applicant requests that the Licensing Board order Mr. Reed to respond to Applicant's timely filed discovery requests, including Interrogatories 4, 5, 8,

20, 21, 29, 30, 33, 36, 41, 44, 45, 58, 59, 60, 66, 67, 71, 74, 75, 76, 77, 80 and 90, to which Mr. Reed has objected.

Applicant also requests that the Board set a date by which the answers to disputed interrogatory requests are due.

Respectfully submitted,

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Dated: November 8, 1982

NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

In the Matter of:

UNION ELECTRIC COMPANY

(Callaway Plant Unit 1)

DEPOSITION OF: JOHN G. REED

DATE: August 18, 1982

PAGES: 1 thru 329

AT: Columbia, Missouri

ALDERSON REPORTING

400 Virginia Ave., S.W. Washington, D.C. 20024

Telephone: (202) 554-2345

1 raise any questions as to the adequacy of emergency  
2 planning in the City of Fulton?

3 A No, none whatever.

4 MS. BAUSER: Thank you.

5 MR. PERLIS: How about a recess, Glenn, Mr.  
6 Reed?

7 THE REPORTER: It's not necessary. We have a  
8 lot of work to do. Let's do it.

9 (Whereupon a recess was had,  
10 after which the taking of  
11 the deposition was resumed  
12 as follows:)

13 MR. PERLIS: Let's go back on the record now.  
14 You have no further questions on that?

15 MS. BAUSER: No.

16 BY MR. PERLIS:

17 Q Let's go to B-1.

18 A Okay. No interface exist between on-site and all local  
19 governments due to inadequate communications facilities  
20 and/or formal agreements.

21 Now the key there is "all local goverments."

22 Q All right. I will get to that.

23 First of all, can you delineate what you mean by  
24 "interface"?

25 A Interface would be a formal discussion of issues involved

1 and problems to be resolved in order to comply with the  
2 aspects of providing for public health and safety in the  
3 event of an accident at a nuclear plant.

4 Now, we have a problem here in that an incorporated  
5 town under Missouri statute, as far as I know, is its own  
6 entity. The county court has no authority over an  
7 incorporated town. It only has control over the  
8 unincorporated communities and the general farmland in  
9 the area.

10 So when you talk about the county courts accepting a  
11 responsibility and that responsibility automatically  
12 applying to incorporated towns that fall within the EPZ,  
13 I see a problem.

14 Q Well, let's get to that.

15 When you talk about no interface existing between  
16 on-site and all local governments, are you only talking  
17 about incorporated municipalities here?

18 A Uh-huh.

19 Q Could you list them?

20 A Mocane, Chamois.

21 Q Could you spell them?

22 A M-o-c-a-n-e, Mocane; C-h-a-m-o-i-s, Chamois; Morrison,  
23 M-o-r-r-i-s-o-n; Gasconade County, G-a-s-c-o-n-a-d-e; and  
24 Rhineland, R-h-i-n-e-l-a-n-d. These are the  
25 unincorporated towns that are located within the

1 geographical emergency planning zone, not necessarily to  
2 a definite 10-mile circle.

3 Q I want to be clear on this.

4 Those are the only local governments you are talking  
5 about in this contention?

6 A That's correct.

7 Q You are not referring to any of the counties?

8 A Let me see where I am.

9 We are talking about interfaces. Okay.

10 Q I want to know, could we rewrite in there, "No interface  
11 exists between on-site and the towns of" -- the five  
12 towns you just read off -- "due to inadequate facilities  
13 and/or formal agreements? Would that mean the same  
14 thing?

15 A Yes; except when we get down to the -- and this is  
16 currently in a state of flux -- when we get down to where  
17 we are talking about functioning from the applicant's EOF  
18 to the county courts, they say, "You will have a  
19 representative come here and we will tell this  
20 representative everything that he needs to know."

21 Well, that's fine if you have a knowledgeable county  
22 representative, but unless he has some way to communicate  
23 this information to the other people, you have a  
24 situation where command and staff know what they are  
25 doing but nobody down at battalion knows what is going

1 on.

2 Q That's C-2?

3 A Yes.

4 Q We will get to that.

5 A But there are ties across. In my naivety, I don't know  
6 how to delineate exactly.

7 Q If we can avoid the duplicity in having --

8 A I would say yeah, if that would be rewritten so that it  
9 applies only to the towns, I would accept that as a  
10 reasonable thing.

11 Q Why do you feel that an interface with the towns is  
12 required?

13 A Because the towns are their own authority, and if they  
14 have to perform a function in support of a commercial  
15 enterprise -- and that's what this boils down to. That's  
16 by your ruling.

17 Q Let's stop right there.

18 What functions are they performing?

19 A If they have to evacuate their people, if they have to  
20 establish a warning system or a warning network, if they  
21 have to provide any internal administration in order to  
22 make their people aware of what their responsibilities  
23 are, then they would have the same function as the county  
24 has.

25 Q Do the plans call for them to perform any of these

1 functions?

2 A No, not at present.

3 Well, see, I am spread between what Stiller says  
4 versus what the plan says.

5 Q Let's go by what the plans says, since that's what is  
6 going to be submitted to the NRC.

7 A There are functions ascribed in here to mayors and --

8 Q Can you tell me where you are?

9 A Let me find where I am and I will give it to you.

10 Q Fair enough.

11 A Okay. On Page 2-8 of the new plan.

12 You don't have it?

13 Q Which county are you on?

14 A Montgomery.

15 You have the mayor of Rhineland listed. However,  
16 they don't have his name as a member of the emergency  
17 operations center staff. He is the -- let's see if he's  
18 got a function up here, under --

19 None of these plans are identical. That's the  
20 problem.

21 They have a control function within the plans for  
22 mayors, since they are the senior elected official of  
23 that governmental unit, and if they also set on the EOC  
24 staff, then, obviously, he can't be at the EOC staff and  
25 down functioning as a mayor inside his community.

1           So there has to be some infrastructure at the  
2 community level to provide for his absence. You know,  
3 there has to be a chain of command.

4       Q     But the players are given a control function in the plan.

5       A     Sure, they are, because the county courts said that they  
6 will not pay for the evacuation of their incorporated  
7 cities nor will they pay for any costs involved in the  
8 cities functioning in exercises in relation to any aspect  
9 of what that city does in support of the UE planning  
10 requirement.

11      Q     Let's accept, for the moment, the functions that the  
12 cities have, that the mayors have in the plans as they  
13 are currently written.

14           Do you contend that the cities must perform  
15 additional functions which are not in the plans or that  
16 city first must --

17      A     I see the cities as having the same responsibility for  
18 their citizens as the county have for their citizens, and  
19 if you accept anything different from that, then you must  
20 find a way to take their legal responsibility away from  
21 them and give it to somebody else, and I don't think it  
22 can be done under statute.

23      Q     What responsibilities are you talking about?

24      A     Their responsibility for governing themselves.

25           If a town has a policeman and that is their city law

1 enforcement officer, duly sworn and constituted, I don't  
2 see how anyone else can come in and chase him out of the  
3 office and take over that responsibility; the same way  
4 for the fire chief or whoever, and while it's visible at  
5 the City of Fulton, the utility has already acknowledged  
6 that they are dealing with a city government as an entity  
7 and then they turn right around and say, "Because of  
8 population, we refuse to acknowledge these other  
9 entities."

10 Prime case in Morrison. At the last meeting, the  
11 mayor of Morrison met -- the members of the town council  
12 were there and the fire protection district was there --  
13 met with Mr. Stiller. Mr. Stiller said that he was down  
14 to talk to the fire protection district, not the City of  
15 Morrison, and that under no circumstances would UE be  
16 dealing with the City of Morrison. The City of Morrison  
17 would have to deal with the county. Yet, he would go to  
18 a fire protection district and deal with them as an  
19 entity.

20 I find an inconsistency that bothers me.

21 Q Accepting inadequate communications facilities, if formal  
22 agreements were signed between Union Electric and the  
23 five cities you have mentioned, would that take care of  
24 the interface problem?

25 A Sure.

1                   MR. PERLIS: That's all the questions I have on  
2                   that one.

3 BY MS. BAUSER:

4 Q           What about letters of agreement between the counties and  
5           the cities rather than between UE and the cities or the  
6           County of Callaway, for example, the lead county?

7 A           Well, see, let me take exception to "lead county."

8                   To the best of my knowledge, no county has agreed to  
9           that concept.

10 Q          Well --

11 A          UE likes the concept, the state likes the concept, and  
12          they have prepared their plans with that concept in mind.  
13          However, I don't see that any county, as of today, has  
14          agreed to accept a secondary role to Callaway, simply  
15          because Callaway is the host area for the plant.

16 Q          Well, let me --

17 A          That aside --

18 Q          Yes.

19 A          -- ask your question again and I will answer it.

20 Q          Mr. Perlis mentioned letter of agreement between Union  
21          Electric and the incorporated towns.

22 A          Uh-huh.

23 Q          I was wondering if the agreement could be between local  
24          government and the incorporated towns; for example, the  
25          county in which the incorporated town is located; and the

1 incorporated town.

2 A Okay. Now, I would find nothing wrong with that concept  
3 as long as there are adequate provisions made with the  
4 county to include these functions. However, I find it  
5 much simpler and more clearly defined, that, if Union  
6 Electric has to make an agreement for equipment or  
7 funding with a particular entity, that it deal with that  
8 entity on a one-to-one basis, if you will, rather than,  
9 "Why don't we just make an agreement with state and let  
10 state work with the counties and the cities," and then  
11 you have -- you know, you only have one agreement to  
12 worry about.

13 Q Are you concerned that the citizens within any of these  
14 incorporated towns, and if so, please specify --

15 A Well --

16 Q Wait a minute.

17 -- would not be properly notified in the event of an  
18 emergency? --

19 A Uh-huh.

20 Q Do you think that the siren system would not work to  
21 cover the area that is encompassed by the incorporated  
22 town?

23 A The siren system that has been outlined in the previous  
24 plans appears to be adequate.

25 I can't pass judgment on something that I haven't

1           seen tested.

2           What I do foresee as a possible problem area is that  
3           the communications network, as is established under these  
4           proposed plans, called for Union Electric to notify  
5           Callaway, and everyone else to set by and wait for  
6           someone in Callaway County to call them and notify them.  
7           That's the first point for a potential breakdown in the  
8           communications network.

9           If Callaway only takes care of themselves, then I  
10          see a delay factor built into a communications warning  
11          network.

12        Q       Wet, let me ask you: Isn't it true that the sirens are  
13               under the control of the counties, so that you won't, for  
14               example, need to notify an incorporated town in order to  
15               get sirens going in the area of the town?

16        A       The siren of an incorporated town is under the control of  
17               the mayor. The sirens in Fulton are under the control of  
18               the mayor. The sirens in the county are under the  
19               control of the county judge.

20        Q       Aside from Fulton, you are saying that the sirens are  
21               under the control of the towns that you named?

22        A       It should be.

23        Q       Well, I am asking you if that's what the plan called for.

24        A       The plan doesn't call for anything as relates to local  
25               governments.

1           The smaller communities -- now, exclude Fulton,  
2 unless you call Fulton --

3       Q     Right.

4       A     -- a local government.

5           When I am talking about local goverments, I am  
6 talking about all of the towns. They are in essence,  
7 excluded from the plan, except that they are referred to  
8 as fulfilling functions and their mayors are given staff  
9 positions in the EOC; but there is --

10      Q     Do you have any other concern as to the notification of  
11 individuals in incorporated towns other than the fact  
12 that we don't yet have the siren system in place and  
13 tested?

14      A     I don't see any -- we have got some Vietnamese in the  
15 communities that don't speak English, and, unfortunately,  
16 all of our printed matter and radio announcements are  
17 geared to only English-speaking persons.

18           I know we killed a lot of Vietnamese.

19      Q     This is a concern that isn't related to the incorporated  
20 nature of the town.

21           This is another separate subject?

22      A     Well, in some cases, these people live in town in these  
23 little towns.

24      Q     All right. You are concerned that nobody will get in  
25 touch with them because they live in the incorporated

1 town?

2 A No. I am concerned that the entire communications  
3 network, and the sirens -- all the siren says is turn on  
4 your radio, and if you turn on your radio and all you  
5 listen to is music, there is no problem, but if you are  
6 listening to detailed information as regards your safety,  
7 and it tells you to evacuate and you don't understand  
8 what it means to evacuate, you are in trouble. If it  
9 says to take shelter and close all the windows and you  
10 think it means evacuate because you hear the siren going  
11 off, you have a problem.

12 Q I understand.

13 A And if the small cities aren't organized and trained to  
14 function, it would be the same thing as having a  
15 company-sized unit that's a mob, and all you do is say,  
16 you know, "The enemy is that way. Go get him," and you  
17 get no controlled response, you know.

18 MR. PERLIS: Off the record.

19 (There followed a discussion  
20 outside the record.)

21 MR. PERLIS: Back on the record.

22 MS. BAUSER: I have no more questions.

23 MR. PERLIS: Let's to go C-1 now.

24 THE WITNESS: Did I answer your question?

25 MS. BAUSER: Yes, I think so.