

May 21, 1982

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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Before the Atomic Safety and Licensing Board

In the Matter of )  
 )  
UNION ELECTRIC COMPANY ) Docket No. STN 50-423 OL  
 )  
(Callaway Plant, Unit 1) )

APPLICANT'S MOTION, AND ANSWER  
TO REED MOTION, TO ESTABLISH  
SCHEDULE FOR CONDUCT OF HEARING  
ON EMERGENCY PLANNING ISSUES

In its Special Prehearing Conference Order of April 21, 1981, the Board admitted the three general emergency planning contentions of Intervenor John G. Reed without objection from Applicant Union Electric Company or the NRC Staff. In fact, Mr. Reed's contentions were formulated as a result of a discussion among the parties during a prehearing conference recess convened for that purpose. See Tr. 84-87. However, as counsel for Applicant stated at the time, Applicant did not object to the general nature of Mr. Reed's contentions because emergency plans for the Callaway Plant were not yet available. Tr. 36 (Baxter). It was therefore agreed by the parties, and established by the Board, that Mr. Reed's contentions would be admitted with the understanding and requirement that they would be further specified once the onsite and offsite emergency

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plans were made available for Mr. Reed's review.<sup>1/</sup> See Special Prehearing Conference Order of April 21, 1982, at 5-7. The Board specifically required Mr. Reed to further specify his Contentions 1 and 3 within 15 days from the time the emergency plans were prepared and made available. Id. This schedule was consistent with Mr. Reed's expressed willingness to further specify his first contention "15 days after the local plans are prepared." Tr. 38 (Reed).

The parties met on April 1, 1982, to discuss and plan for the litigation of Mr. Reed's contentions. Prior to that time, informal discovery between the parties had proceeded. Also, in September, 1981, Applicant had informed Mr. Reed of Applicant's interest in Mr. Reed further specifying his contentions in the near future so that the litigation could proceed productively. See Letter of September 25, 1981, from Applicant's counsel to Mr. John Reed. Several drafts of the onsite emergency plan had been issued and provided to Mr. Reed during the summer, and a draft of the Callaway Offsite Emergency Response Plan was made available to Mr. Reed in October of 1981. In addition, the implementing procedures for two of the local jurisdictions

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<sup>1/</sup> Mr. Reed in his May 14, 1982 letter to the Board and the parties refers to the prehearing conference statement by counsel for Applicant that Mr. Reed's contentions would require subsequent specification. Insofar as Mr. Reed contends that this agreement meant that his contentions need not be specified until the emergency plans are "filed" with the Federal Emergency Management Agency ("FEMA"), see also Reed Motion to Establish Hearing Schedule, dated May 15, 1982, this is inconsistent with Applicant's understanding of the parties' agreement and the Board's directive.

in the Emergency Planning Zone ("EPZ"), Callaway County and the City of Fulton, had been issued in draft form to local officials in February, 1981.<sup>2/</sup>

As Applicant indicated in its April 6 letter to the Board and the parties, during the April 1 meeting, Mr. Reed took the position that additional time was appropriate to particularize his contentions. Although Applicant did not agree since the onsite and offsite plans had been available to Mr. Reed for some time, Applicant nevertheless agreed to wait until the end of the month (April 30), at which time the parties would try to reach a stipulation on the particularized contentions of Mr. Reed which would be litigated.

The April 30 date by which Mr. Reed agreed to particularize his contentions appeared to be more than sufficient since by that time, Mr. Reed would not only have available to him the Callaway onsite and offsite plans, but he would also have in hand draft operating procedures for all of the counties in the EPZ, and for the City of Fulton. In fact, by April 17, 1982, Mr. Reed had been hand served with copies of all five of these operating procedures. During the last week of April, Mr. Reed received a revision of the City of Fulton and Callaway County

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<sup>2/</sup> While Mr. Reed was the civil defense director of Callaway County and the City of Fulton until March 5, 1982, he informed us at the April 1 meeting he had not received the Callaway and Fulton operating procedures; therefore, we promptly delivered these documents to Mr. Reed.

operating procedures, combining the previous two documents into one integrated document. In addition, Mr. Reed received a copy of the revised Missouri State Nuclear Accident Plan on April 30.

The meeting planned for April 30, 1982, was unavoidably delayed until May 14, 1982. Although Applicant hoped that this additional two weeks of time would ensure that Mr. Reed would be ready to discuss his particularized contentions and the parties would be able to stipulate to them, in fact Mr. Reed was still not ready on May 14, 1982. Consequently, the May 14 meeting was unsuccessful. While Mr. Reed did review with the Applicant and the Staff 19 new contentions in lieu of his first contention, many of these allegations were still vague, and Mr. Reed was reluctant to agree to any specific word changes during the meeting. Mr. Reed did record suggested clarifications proposed by counsel for the Staff and counsel for Applicant. However, Mr. Reed had not begun to particularize the general allegations raised in his second and third contentions. Moreover, Mr. Reed would not agree to file specific contentions until after the local plans were approved by the counties. In his Motion to Establish Hearing Schedule, filed the day after the parties met, Mr. Reed has extended this deferral even further, arguing that he should not be required to particularize his contentions until the local plans are submitted to FEMA for review.

Applicant believes that Mr. Reed's position is unjustified and unreasonable. Mr. Reed has had available to him for more

than seven months the substance of the Callaway Plant onsite and offsite emergency plans. It is true that these plans are living documents, which are evolving (and which will continue to evolve over time); in fact, Applicant would anticipate that as a result of the emergency drill conducted after the Callaway Plant emergency plans are forwarded to FEMA, changes will be made to the plans. However, the fundamental structure and substance of these emergency planning efforts have been fixed since the plan drafts were first issued. While Mr. Reed is understandably anxious to avoid having to amend his contentions, this possibility must be balanced against the need to initiate the litigation process and in recognition of the current advanced stage of the planning process. As the Licensing Board stated in a recent Memorandum and Order in the Wolf Creek operating license proceeding, in order to proceed with discovery on emergency planning contentions, "there is no requirement in NRC Regulations that emergency response plans must have reached this [final] stage of resolution at this point in the proceeding." Kansas Gas and Electric Company (Wolf Creek Generating Station, Unit 1), Board Memorandum and Order on Motion to Compel, December 30, 1981. If it is appropriate to proceed with the discovery process before the emergency plans have been finalized, it is clearly reasonable to require an intervenor to specify his emergency planning contentions--a necessary first step in proceeding with the litigation--before this finalization has taken place. Mr. Reed's objection that he does not want to rewrite the local plans "due to the many inadequacies" does not ring true; for this is precisely the

role which an intervenor with a legitimate complaint plays in the NRC licensing process. See Reed Motion to Establish Hearing Schedule, May 15, 1982.

In light of Applicant's several unsuccessful efforts both to encourage Mr. Reed to particularize his contentions and to reach a stipulation on such particularizations, Applicant now requests the Board to set a schedule by which specific contentions must be filed by Mr. Reed. Applicant proposes the following schedule, which essentially delays the proceeding by one month from the schedule proposed by Applicant in our April 6, 1982 letter to the Board and the parties:

June 14, 1982:	Last day for filing of particularized contentions by Mr. Reed.
July 9, 1982:	Last day for filing discovery requests.
August 5, 1982:	Last day for filing responses to discovery requests.
September 9, 1982:	Filing of direct, written testimony.
September 27, 1982:	Commencement of evidentiary hearing.

Applicant believes that the schedule it now proposes is fair to all of the parties to the proceeding. Applicant is concerned about proceeding expeditiously on the issue of emergency planning so as to not unnecessarily risk compromising the Callaway Plant fuel load date of June, 1983. At the same time, Applicant believes that Mr. Reed has had more than a sufficient time to particularize his contentions, and that there is absolutely no reason to delay the start of the proceeding any longer. Applicant recognizes that its proposed schedule does not account for time necessary to

resolve any disputes over Mr. Reed's specified contentions which might arise, and that a time period has not been set aside for the summary disposition process. In the event these contingencies arise, Applicant believes these matters can be worked into the schedule in a manner that is fair to and manageable for all the parties.

In conclusion, Applicant opposes the request by Mr. Reed to permit him to defer specifying his contentions until the local plans are submitted to FEMA and, instead, urges the Board to adopt Applicant's proposed schedule for proceeding with the litigation of Mr. Reed's emergency planning contentions.

Respectfully submitted,

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DATED: May 21, 1982.



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NUCLEAR REGULATORY COMMISSION

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Before the Atomic Safety and Licensing Board

In the Matter of )  
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing APPLICANT'S MOTION, AND ANSWER TO REED MOTION, TO ESTABLISH SCHEDULE FOR CONDUCT OF HEARING ON EMERGENCY PLANNING ISSUES was served this 21st day of May, 1982, by hand delivery to counsel for the NRC Staff and to Mr. John G. Reed; and by deposit in the United States mail, postage prepaid, addressed to all other persons on the attached Service List.

Deborah B. Bauser  
Deborah B. Bauser



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NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of )  
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(Callaway Plant, Unit 1) )

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