

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 FOR SUMMARY  
DISPOSITION OF REED CONTENTION 11  
(REENTRY/RECOVERY RADIATION STANDARDS)

Pursuant to 10 C.F.R. §2.749, Applicant moves the Atomic Safety and Licensing Board for summary disposition of Reed Contention 11. As grounds for its motion, Applicant asserts that there is no genuine issue of material fact to be heard with respect to Contention 11, and that Applicant is entitled to a decision in its favor on that contention as a matter of law.

This motion is supported by Applicant's Statement of Material Facts as to Which There is No Genuine Issue to be Heard (Contention 11), the Affidavit of John W. Baer on Reed Contention 11 (Reentry/Recovery Radiation Standards) (hereafter

"Baer Affidavit"), Applicant's Memorandum of Law in Support of Motions for Summary Disposition on Emergency Planning Issues, the Missouri Nuclear Accident Plan - Callaway ("State Plan"), the Callaway County/Fulton Radiological Emergency Response Plan, the Osage County Radiological Emergency Response Plan, the Gasconade County Radiological Emergency Response Plan, and the Montgomery County Radiological Emergency Response Plan,<sup>1/</sup> together with all pleadings and other papers in this proceeding.

### I. Procedural Background

Reed Contention 11 was admitted and reformulated by the Board to state as follows:

Off-site emergency plans are deficient in that they do not contain adequate radiation standards to be applied during recovery/reentry operations.

Memorandum and Order (Specification and Approval of Contentions), at 2 (Feb. 25, 1983).

Earlier the Board had rejected most of Contention 11 (Reentry/Recovery) as pleaded by Mr. Reed,<sup>2/</sup> the admission of which had been opposed by both Applicant and the Staff. In its holding, the Board stated:

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<sup>1/</sup> The Callaway/Fulton, Osage, Gasconade and Montgomery Plans are also referred to collectively as the "local plans."

<sup>2/</sup> Final Particularization of Reed's Amended Contentions 1, 2 and 3 (Oct. 1, 1982), at 26-28.

The contention challenges the reentry/recovery provisions of local governments' response plans on the basis that they are not specific. Intervenor cites a number of additional actions that must be undertaken to make the plans specific as allegedly required by 10 CFR 50.47(b)(13). These include providing a time frame for exposure for radiation levels; establishing a basic ground contamination level reading and a reentry time frame; including specifically 10 CFR, Part 20 guidelines in County Standard Operating Procedures (SOP) to provide local officials with knowledge when recovery can begin; specification of a standard of acceptable radioactive contamination for areas in which reentry is intended; specifying decontamination procedures to enable the area involved to be returned to its pre-emergency condition and finally providing location sources for equipment for reentry/recovery personnel. The Board finds no basis in the regulations or guidance for most of these allegations. Accordingly, the following subparts lack an adequate basis: A(1)(2); B(1)(3); C, D, E, and F. However, before deciding on the admissibility of contention B(2), which calls for including 10 CFR, Part 20 standards in SOP's, the Board requests a brief response from all parties on the applicability of Part 20 standards to reentry/recovery activities.

Memorandum and Order (Specification of Contentions), at 3  
(Dec. 7, 1982).

Following the receipt of comments by the parties on the applicability of 10 C.F.R. Part 20 standards to reentry and recovery operations, the Board concluded as follows:

Although the Board is convinced at this stage that Part 20 was not intended to be applied to emergency planning recovery/reentry conditions, it is not clear what radiation standards, if any, are applicable within the framework of developing general

plans on the subject. General plans cannot be so general that they are devoid of purpose.

Memorandum and Order (Specification and Approval of Contentions), at 2 (Feb. 25, 1983). Accordingly, the Board admitted the reformulated Contention 11 (quoted above). It is clear from this history, then, that the scope of Contention 11 is limited to consideration of radiation standards to be used, and does not extend to the entire plans for, recovery and reentry operations.

## II. Governing Legal Standards

The Commission's regulations which set the standards which must be met by off-site emergency response plans for nuclear power reactors, require simply that "[g]eneral plans for recovery and reentry are developed." 10 C.F.R. §50.47(b)(13). The relevant evaluation criteria (II.M) provided in NRC/Federal Emergency Management Agency ("FEMA") guidance<sup>3/</sup> are that:

1. Each organization, as appropriate, shall develop general plans and procedures for reentry and recovery and describe the means by which decisions to relax

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<sup>3/</sup> NUREG-0654, FEMA-REP-1, Rev. 1, "Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants." This document represents guidance on acceptable means to satisfy the standards of 10 C.F.R. § 50.47(b). See Metropolitan Edison Company (Three Mile Island Nuclear Station, Unit No. 1), LBP-81-59, 14 N.R.C. 1211, 1460 (1981), aff'd, ALAB-698, 16 N.R.C. \_\_\_\_\_, slip op. at 13-15 (Oct. 22, 1982).



protective measures (e.g., allow reentry into an evacuated area) are reached. This process should consider both existing and potential conditions.

3. Each licensee and State plan shall specify means for informing members of the response organizations that a recovery operation is to be initiated, and of any changes in the organizational structure that may occur.

4. Each plan shall establish a method for periodically estimating total population exposure.

NUREG-0654 at 70.

### III. Argument

While Contention 11 now is limited to consideration of radiation standards to be employed in recovery and reentry decision-making,<sup>4/</sup> Applicant's fundamental disagreement with Mr. Reed over the appropriate level of detail to be included in radiological emergency response plans comes into play here as well. Two related and misguided principles appear to underlie Mr. Reed's position on this issue: (1) that local government decision-makers should have an independent capability to

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<sup>4/</sup> The local plans define "recovery" as the post-accident period during which efforts are directed to returning affected areas to normal. "Reentry" is defined as the process of reoccupation of affected areas once radiation levels fall below occupancy standards. Appendix 1 to local plans.

initiate and direct recovery and reentry operations without reliance upon Federal and State government personnel or Applicant; and (2) because the local government officials are not qualified to act on their own with respect to recovery and reentry, the plans should provide complete guidance in advance, so that local officials merely have to "look up" what to do given the situation at hand.

During a deposition, Mr. Reed was asked what steps might be taken to satisfy an earlier version of his contention on plans for recovery and reentry. Mr. Reed's position on radiation standards appeared to be that a sliding scale should be included in the plans, indicating precisely what activities (and for what specified period of time) would be permitted during the recovery and reentry phase. Dep. Tr. 166-168 (Aug. 18, 1982). Mr. Reed explicitly calls for the establishment of "inflexible" standards which would be departed from "under no circumstances." Id. at 167; Reed's Rebuttal to Staff Views Relating to Part 20 Standards, Dated 14 February 1983, at 2 (Feb. 18, 1983). Mr. Reed's view of the role local plans should play in supporting local officials during an emergency was stated candidly in the context of interrogation on recovery and reentry operations:

But, remember, you are starting off with no information on the local level except what's in these books. This is their training. This is all they know. If it's not in here, they don't know it.

Dep. Tr. 170. Mr. Reed advocates that the plans should enable a local official to make informed judgments on recovery and reentry on his or her own. "If such official wants a supportive opinion, he may request such, but does not have to rely solely upon others and become a rubber-stamp for their decisions." Mr. Reed's Rebuttal to Applicant's Objections to Contentions 11 and 12, at 5 (Oct. 25, 1982).5/

A. Local Government Should Look to Federal, State and Applicant Guidance.

The Callaway County/Fulton Radiological Emergency Response Plan provides that:

The County/City will direct and coordinate the reentry of persons into evacuated areas and the restoration of affected areas to their pre-emergency condition. The State will make recommendations regarding reentry into an evacuated area. (See Annex L)

Basic Plan at 6.6/ The local plans state further that "[r]elaxation of protective measures will depend heavily upon recommendations and information from the Bureau of Radiological Health (BRH) and Callaway Plant." Annex L (Reentry and Recovery).

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5/ See also, Dep. Tr. 262 ("I would like to see a -- the county have the ability to prove or disapprove whatever the applicant says . . .").

6/ A similar provision is included in the plans of the three other EPZ counties.

Unlike Mr. Reed, then, it is clear that the local governments involved do not consider it inappropriate, or inconsistent with their responsibilities, to utilize the advice, recommendations and information of others. This is in harmony with the NRC/FEMA guidance

... [T]hat plans of licensees, State and local governments should not be developed in a vacuum or in isolation from one another. Should an accident occur, the public can be best protected when the response by all parties is fully integrated.

NUREG-0654 at 23 (§I.F.). Indeed, another licensing board which examined reentry/recovery plans also observed that assistance from Federal agencies such as the Environmental Protection Agency and the Department of Energy would be available. Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant, Units 1 and 2), LBP-82-\_\_\_\_, 16 N.R.C. \_\_\_\_, slip op. at 64 (Aug. 31, 1982); see also NUREG-0654 at 27-28 (Federal Response); State Plan, Annex H (Federal Agencies and Responsibilities).

There can be no serious dispute that local government decision-makers must and should rely on Applicant and the State to advise them on recovery and reentry operations. The criteria in local plans for relaxation of protective measures call for input on the condition of the plant and the results of radiological assessments -- information which must come from BRH and Applicant. This situation, coupled with the agreement



of local decision-makers to utilize the recommendations and information of others, renders meritless Mr. Reed's isolationist approach to reentry/recovery decision-making.

B. Standards Governing Decision-Making  
Should be Flexible.

The Commission's regulations and FEMA's guidance call for the preparation of "general" plans for recovery and reentry. One reason only general plans are required is that time is available to formulate the operation without public risk. "The role of planning for recovery and reentry does not require immediate response in an emergency since it does not deal with immediate life threatening situations." Diablo Canyon, supra, slip op. at 16.

Unlike evacuation, reentry should not (at least in most cases) be constrained by time. Those things that will have to be done before the return of people to their homes is advisable will depend on the radiological conditions that exist in the area evacuated. In this sense, plans must -- and should -- be ad hoc. The offsite authorities would be the same for emergency response and recovery-reentry operations, so it is not a matter of organizing from scratch.

Southern California Edison Company, et al. (San Onofre Nuclear Generating Station, Units 2 and 3), LBP-82-39, 15 N.R.C. 1163, 1207 (1982), aff'd, ALAB-717, 17 N.R.C. \_\_\_\_ (March 4, 1983).

These principles apply as well to the radiation standards which should be employed in reentry/recovery decision-making. In addition to the fact that time is available to make an assessment specific to the situation at hand, detailed radiation standards are not appropriate because a range of factors other than dose rates can and should be considered. The reentry decision process defined in the off-site plans, which is discussed below, includes a range of factors, such as plant stability and the potential for further uncontrolled radiation releases, which should be considered in addition to dose rates. A rigid set of radiation standards could be misleading and result in a failure to consider these other important factors. Thus, a degree of flexibility, as allowed in the plans, is preferable to exclusive reliance on rigid radiation standards. Baer Affidavit, ¶ 11.

This flexibility is consistent with the absence of specific action levels for reentry and recovery in Federal guidance. The Federal guidance under development now is not expected to suggest specific radiation levels for reentry, but to provide decision-making guidelines that will lead to an orderly decision-making process for reentry.<sup>7/</sup> Baer Affidavit, ¶ 4.

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<sup>7/</sup> The State has indicated that any new federal guidance will be incorporated into the reentry decision criteria when it becomes available. State Plan, Annex B, Attachment 1; Baer Affidavit, ¶ 12.

C. The Recovery/Reentry Criteria in the Off-Site Plans, Including Radiation Standards, are Adequate.

The off-site plans establish criteria by which recovery and reentry decisions will be made. With respect to radiation levels, Annex L of the local plans and Annex B of the State Plan both indicate that projected dose rate levels in the State Protective Action Guides will be considered as a factor in the reentry decision process. The local plans also stipulate that routine reoccupancy may begin if projected dose rates for the general population will not exceed 1 rem whole body or 5 rem thyroid (the lower values of the State PAG radiation levels for the general population).<sup>8/</sup> Baer Affidavit, ¶¶ 6-9; local plans at L-4.

The plans include additional criteria, besides radiation levels, that will be considered in recovery/reentry decisions. These include:

1. Plant conditions. Stability of plant conditions will be assessed to assure that there is no potential for further, uncontrolled releases of radiation to the environment.
2. Residual contamination. Continued environmental monitoring will be conducted by the state and utility to assure that residual contamination will not result in excess exposure to the population.
3. Preparedness. Time and resources required to support an orderly reentry (such as

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<sup>8/</sup> Earlier reoccupancy may be permitted, however, on an individual case basis as necessary. Baer Affidavit, ¶ 6.

traffic control, public transportation, security) will be considered.

4. Costs. The social and economic costs of maintaining protective measures will be balanced with the corresponding health risks to the public.

Baer Affidavit, ¶ 10; State Plan, Attachment 1 to Annex B.

#### IV. Conclusion

The off-site plans provide for recommendations to the re-entry decision-makers from qualified health physics personnel. The plans also establish criteria, to be used flexibly and with the benefit of time, for making the reentry and recovery decisions. These criteria include, but are not limited to, radiation standards in the form of the State PAG's, the lower range of which (for the general population) have been specified in local plans as the basis for routine reoccupancy. These plans comply with NRC/FEMA guidance and the Commission's regulations. More rigid and detailed standards are not needed and are not desirable.

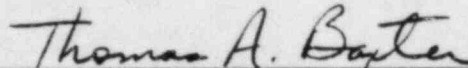
For all of the foregoing reasons, there is no genuine issue of material fact to be heard with respect to Contention



11, and Applicant is entitled to a decision in its favor as that contention as a matter of law.

Respectfully submitted,

SHAW, PITTMAN, POTTS & TROWBRIDGE



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