

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

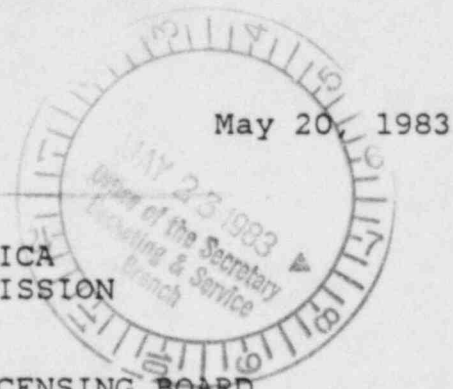
BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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 15
(LETTERS OF AGREEMENT)

Pursuant to 10 C.F.R. § 2.749, Union Electric Company ("Applicant") moves the Atomic Safety and Licensing Board for summary disposition of Contention 15 advanced by intervenor John G. Reed. As shown below, summary disposition is appropriate because there is no genuine issue of material fact to be heard with respect to Contention 15. Accordingly, Applicant is entitled to a decision in its favor on Contention 15 as a matter of law.

This Motion is supported by Applicant's Statement of Material Facts On Reed Contention 15 As To Which There Is No Genuine Issue To Be Heard (Letters of Agreement), Applicant's Memorandum of Law in Support Of Motions for Summary Disposition



On Emergency Planning Issues ("Memorandum of Law"), the Callaway Plant Radiological Emergency Response Plan ("RERP"), the Missouri Nuclear Accident Plan - Callaway ("State Plan"), the Callaway County/Fulton Radiological Emergency Response Plan ("Callaway/Fulton Plan"), the Gasconade County Radiological Emergency Response Plan ("Gasconade Plan"), the Montgomery County Radiological Emergency Response Plan ("Montgomery Plan"), the Osage County Radiological Emergency Response Plan ("Osage Plan"), and the Affidavit of Mr. Walter M. Clark on Reed Contention 15 (Letters of Agreement) ("Clark-15"), all filed simultaneously herewith, as well as the pleadings and other papers filed by the parties in the proceeding.

I. Procedural Background

Reed Contention 15 states:

The proposed Offsite Plan and SOPs identify local government agencies and private companies that may be relied upon to provide assistance in an emergency, but such identification is not supported by appropriate letters of agreement as required by NUREG 0654, II, C4.

A. Assignment of a task without its acceptance by an individual/agency/organization does not constitute a valid task assignment. To attempt to force such assignment is a violation of Articles XII, Section 1, and Article V of the Constitution of the United States of America. Letters of agreement serve additional roles in that they provide a method of assuring response roles are accepted and filled over the lifetime of the plan; during which elected officials and individuals/officials in private organizations can be expected to change. Annual update of letters of agreement is a method of overcoming

these kinds of difficulty. Plus, it shows that the responsible individual is aware of his task and its requirements.

Final Particularization of Reed's Amended Contentions 1, 2 and 3, filed October 1, 1982. The NRC Staff objected to that portion of Reed Contention 15 -- Part B -- concerning the need for letters of agreement from individuals, as well as the assertion that letters of agreement must include a list of named employees who will be expected to function in a radiological environment. See NRC Staff's October 25, 1982 Response to Final Particularization of Reed's Amended Contentions 1, 2 and 3 dated October 1, 1982 at 12. The Board concluded that Part B of Contention 15 was not admissible. The balance of the contention, quoted above, was admitted to the proceeding. Board Memorandum and Order of December 7, 1982 at 5-6.

Mr. Reed has never specifically identified the agencies and organizations for which he contends letters of agreement are necessary. See Deposition of John G. Reed (Aug. 18, 1982) at 24; John G. Reed's Responses to Applicant's Revised Interrogatories, Nov. 12, 1982, at 14 (response to interrogatory 72).

II. Governing Legal Standards

The need for letters of agreement between the four jurisdictions within the EPZ with emergency response plans and those independent organizations with an assigned radiological

emergency response role in the plans is a product of several of the general NRC regulatory requirements set forth in 10 C.F.R. § 50.47(b). Section 50.47(b)(1) requires that "primary responsibilities . . . have been assigned, the emergency responsibilities of the various support organizations have been specifically established, and each response organization has staff to respond. . . ." Section 50.47(b) provides that, inter alia, "Arrangements for requesting and effectively using assistance resources have been made. . . ." On the basis of each of the requirements, two of the evaluation criteria in the guidance document, 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," (Nov. 1980) ("NUREG-0654")^{1/} specify the need for appropriate letters of agreement. See NUREG-0654, Sections II.A.3 and II.C.4.

III. Argument

The standards governing summary disposition motions in an NRC proceeding are set forth in Applicant's Memorandum of Law. In summary, where, as here, a properly supported motion for

^{1/} NUREG-0654 is a guidance document; it is not binding on the Commission. 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).

summary disposition is made, the party opposing the motion must come forward with substantial facts establishing that a genuine issue of fact remains to be heard. In the absence of such a showing, the movant is entitled to a decision in its favor on that contention as matter of law.

Applying the foregoing standards to this case, it is clear that Applicant's motion for summary disposition on Reed Contention 15 should be granted. Applicant does not contest the general requirement that letters of agreement should be obtained by local governments. However, Applicant supports the position of Mr. Walter M. Clark, the Emergency Management Director of Callaway County and the City of Fulton, as to when letters of agreement need to be obtained to ensure the availability of needed resources in a radiological emergency. This position has been adopted in the other three counties in the plume exposure emergency planning zone ("EPZ"). Mr. Clark not only represents the interests of the dominant county and population area in the Callaway Plant EPZ, see Stanfill-2, ¶ 4, but he is an individual with some 25 years of experience in emergency response management in the State of Missouri. Clark-15 at ¶ 1 and attached Exhibit "A".

In Mr. Clark's view, it is necessary for Callaway County/Fulton to obtain letters of agreement from those organizations upon which the County/City will rely during a radiological emergency for services not ordinarily provided by

these organizations to the County/City. Letters of agreement need not be obtained for County/City functions or services which regularly are provided to residents through County/City funds. Id., ¶ 5.

In addition, as stated in each of the four county plans and in the State Plan, support agreements between the State of Missouri and public and private agencies apply to resource needs in the counties in the event of a radiological emergency at the Callaway Plant. See all four county plans at Appendix 4; State Plan, Appendix 7 at 7.1. Thus, the counties need not obtain agreements which duplicate those contained in the State Plan. Id., ¶ 6.

Appendix 4 of each of the county plans, entitled "List of Letters of Agreement," specifies those organizations with whom each of the counties has or will obtain letters of agreement for services and personnel that will be made available to the County/City in the event of a radiological emergency at the Callaway Plant. Clark-15, ¶ 7 and attached Exhibit "B" (Appendix 4 to Callaway/Fulton Plan). Appendix 4 to the Gasconade, Osage and Montgomery County plans are appended hereto as Attachment 1. As discussed in Applicant's Memorandum of Law, the Commission's regulations do not contemplate that at the time of an adjudicatory hearing on contested off-site emergency planning issues, all planning commitments contained in the off-site plans are capable of being implemented. See

Memorandum of Law at 5-8. The Licensing Board, in deciding this motion, may determine what letters must be obtained, and leave it for the Staff and FEMA to confirm compliance or determine that appropriate compensating measures are available.

In Callaway County/Fulton, there are four categories of assistance on which the County/City will rely in the event of a radiological emergency for which special arrangements, through letters of agreement, must be made. Special arrangements need not be made by the County/City with those organizations that regularly provide services to the County/City, such as wrecker services called by the Sheriff or Chief of Police to tow automobiles involved in a car accident. In such instances, should the need arise, the normal, established practice and method of obtaining such services has proven itself perfectly satisfactory and reliable. Clark-15, ¶ 8. The establishment of access control points will ensure that no response personnel enter a risk area unless specifically authorized and equipped to do so. If necessary, radiological emergency workers will be assigned to perform missions in risk areas in which unauthorized personnel are not allowed access. See Annex I, Tab 2, Section II of each of the county plans.

The first category of organizations with whom all of the counties have or will obtain letters of agreement is fire/law enforcement. These areas of responsibility initially fall on government officials with whom letters of agreement need not be

obtained, e.g., the County Sheriff and his deputies, the Fulton Chief of Police and police officers, and the county or city regular fire departments. Clark-15, ¶ 9 and Exhibit "B"; Attachment 1. In addition to these local government employees, the counties may require the assistance of various volunteer sheriff's or fire organizations. With respect to these organizations, letters of agreement have been or will be obtained. See Clark-15 at Exhibit B; Attachment 1. In Callaway County/Fulton, letters of agreement already have been obtained from the Mokane Fire Department, the North Callaway Volunteer Fire Department and the Central Callaway Volunteer Fire Department. Clark-15, ¶ 9 and attached Exhibit "C".

The second assistance category for which letters of agreement will be obtained in all of the counties consists of those organizations upon whom the county plans rely to provide special transportation in the event of a radiological emergency at the Callaway Plant. This refers to the transportation that will be provided to individuals who have no transportation of their own or persons who are unable to drive who need to be evacuated. It does not refer to transportation regularly relied upon and paid for by the county schools (or County/City in the case of the Callaway/Fulton Plan), such as buses used by school children. Clark-15, ¶ 12 and Exhibit "B"; Attachment 1. These buses are relied upon in other exigent circumstances when schools are shut-down, e.g., heavy snow, and regularly provide

their usual service during such events. However, in order to satisfy the special transportation needs of local governments in the event of a radiological emergency at the Callaway Plant requiring evacuation, letters of agreement either have been or will be obtained from the appropriate organizations. See Clark-15, ¶ 12 and Exhibits B, F and G; Attachment 1.

Callaway County/Fulton also has or will obtain letters of agreement from two other types of response organizations: the hospital relied upon in the Callaway/Fulton plan and ambulance services. The County/City will obtain a letter of agreement with Callaway Memorial Hospital for medical services in the event of a radiological emergency. Clark-15, ¶ 11. (Applicant already has obtained such a letter. See RERP, Appendix C.)

Mr. Clark considers it unnecessary to obtain a letter of agreement from the Callaway County Ambulance District because it has statutory responsibility for ambulance service throughout the County. Clark-15, ¶ 10. (Applicant already has obtained such a letter. See RERP, Appendix C.) However, Mr. Clark has obtained letters of agreement with Boone County Hospital, Columbia, Charles E. Still Hospital and St. Mary's Health Center in Jefferson City, and Audrain Medical Center in Audrain County. Id. at ¶ 10 and Exhibit "D". In addition, he will be obtaining a letter of agreement for ambulance services from the University of Missouri Medical Center in Columbia. Id. at ¶ 10.

The other counties in the EPZ do not need to independently obtain letters of agreement for special hospital or ambulance services because of the agreements that have been or will be obtained by the Applicant and the State of Missouri for such services. See RERP, Appendix C; State Plan, Appendix 7 at pages 7.1 and 7.7; Applicant's Motion for Summary Disposition of Reed Contention 10 (Medical Treatment); Southern California Edison Company, et al. (San Onofre Nuclear Generating Station, Units 2 and 3), CLI-83-10, 17 N.R.C. ____ (April 4, 1983).

All of the county plans also provide that if transportation is needed beyond normal ambulance range, or if time is critical, air transport will be provided by the Missouri State Highway Patrol or the National Guard, as requested by the State Emergency Management Agency ("SEMA"). See Annex K, Section III.C of each of the four county plans. Letters of agreement from the Highway Patrol and the National Guard to SEMA are contained in Annex A of the State Plan.

On the basis of the letters of agreement already obtained or to be obtained by Callaway County/Fulton, Mr. Clark concludes that he has or will obtain letters of agreement for all special services relied upon by the County/City for which letters of agreement have not been obtained by the State of Missouri. Clark-15, ¶ 13. The other counties in the EPZ have followed the lead of Callaway County/Fulton, and have obtained or will obtain letters of agreement that are necessary to

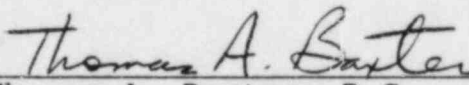
ensure that special services relied upon during a radiological emergency will be available. See Attachment 1. Thus, appropriate letters of agreement have been or will be obtained, consistent with the concern expressed by Mr. Reed in Contention 15.

IV. Conclusion

Mr. Reed's Contention 15 has been fully satisfied because letters of agreement necessary to implement the county radiological emergency response plans have been identified, many letters have been obtained, and State and local governments have committed to seek additional letters deemed necessary. Because there is no genuine issue of material fact in dispute among the parties, Applicant's Motion for Summary Disposition of Reed Contention 15 (Letters of Agreement) should be granted.

Respectfully submitted,

SHAW, PITTMAN, POTTS & TROWBRIDGE



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May 20, 1983

5/10/83

APPENDIX 4LIST OF LETTERS OF AGREEMENT

I. The following letters of agreement are between the agencies listed and the Gasconade County Emergency Response Organization:

A. Fire Departments

Morrison Fire Department

B. Transportation Providers

1. Gasconade R-1 School District, Hermann

2. Tri-County Trucking, Hermann

II. The State of Missouri also has support agreements with public and private agencies. Such agreements would apply to Gasconade County by virtue of State involvement in an emergency. For a list of such agreements, see the State Nuclear Accident Plan.

III. Signature Sheet

APPENDIX 4

LIST OF LETTERS OF AGREEMENT

- I. The following letters of agreement are between the agencies listed and the Osage County Emergency Response Organization:
 - A. Fire Departments
 1. Chamois Volunteer Fire District
 - B. Transportation Providers
 1. R-1 Osage School Chamois, Mo.
 2. Osage Ambulance District
- II. The State of Missouri also has support agreements with public and private agencies. Such agreements would apply to Osage County by virtue of State involvement in an emergency. For a list of such agreements, see the State Nuclear Accident Plan.

APPENDIX 4

LIST OF LETTERS OF AGREEMENT

I. The following letters of agreement are between the agencies listed and the Montgomery County Emergency Response Organization:

A. Volunteer Organizations

1. Rhineland Volunteer Fire Department
2. Big Spring Volunteer Fire Department

B. Transportation Providers

1. Montgomery R-I School District, Hermann
2. Tri-County Trucking, Hermann
3. Swartz Bus Company, Jonesburg

II. The State of Missouri also has support agreements with public and private agencies. Such agreements would apply to Montgomery County by virtue of State involvement in an emergency. For a list of such agreements, see the State Nuclear Accident Plan.