

May 20, 1983

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 18
(Human Food And Animal Feeds)

Pursuant to 10 C.F.R. § 2.749, Union Electric Company ("Applicant") moves the Atomic Safety and Licensing Board for summary disposition of Contention 18 advanced by intervenor John G. Reed. Summary disposition is appropriate because, as shown below, there is no genuine issue of material fact with respect to Contention 18. Accordingly, Applicant is entitled to a decision in its favor as a matter of law.

This Motion is supported by Applicant's Statement of Material Facts On Reed Contention 18 As To Which There Is No Genuine Issue To Be Heard (Human Food And Animal Feeds), Applicant's Memorandum of Law In Support Of Motions For Summary Disposition On Emergency Planning Issues ("Memorandum of Law"), the State of 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"), and the Osage County Radiological Emergency Response Plan ("Osage Plan"), in conjunction with the pleadings and other supporting material filed in these proceedings.

I. Procedural Background

Contention 18 of intervenor John G. Reed asserts that:

Each State and local organization shall establish a capability for implementing protective measures regarding radioactive contamination of human food and animal feeds under the provisions of NUREG 0654, II, J.9 & 11. No capability exists at any county government to implement such measures and neither the State RERP nor the Off-site Plan/SOPs contain procedures for the initiation of such actions.

Final Particularization of Reed's Amended Contentions 1, 2 and 3 (Oct. 1, 1982), at 40. The Board admitted Reed Contention 18 without objection from the Staff or Applicant. Memorandum and Order (Specification and Approval of Contentions), at 2 (Feb. 25, 1983).

II. Governing Legal Standards

The standard for protective plans concerning human food and animal feeds is embodied in the last half of the second sentence of 10 C.F.R. § 50.47 (b)(10), which states offsite emergency response planning must satisfy the requirement that:

A range of protective actions have been developed for the plume exposure pathway EPZ for emergency workers and the public. Guidelines for the choice of protective actions during an emergency, consistent with Federal guidance, are developed and in place, and protective actions for the ingestion exposure pathway EPZ appropriate to the locale have been developed.

The requirement embodied in subsection (b)(10) has been elaborated on by the voluntary guidelines entitled "Accidental Radioactive Contamination of Human Food and Animal Feeds; Recommendations for State & Local Agencies" noticed by the Food and Drug Administration ("FDA") at 47 Fed. Reg. 47073 (1982).^{1/} These recommendations

contain basic criteria, defined as protective action guides (PAG's), for establishing the level of radioactive contamination of human food or animal feeds at which action should be taken to protect the public health and assure the safety of food.

Id. at 47074. The FDA recommendations contain specific guidance on emergency protective measures and general guidance on the development and implementation of those measures. Id.

State and local planning incorporates this guidance and the PAG's as suggested by NUREG-0654/FEMA-REP-1 (Rev. 1), "Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear

^{1/} The Food and Drug Administration declined to codify the recommendations, stating they constituted "voluntary guidance to State and local agencies," and simply published them as a notice. 47 Fed. Reg. 47073, 47074 (1982).

Power Plants" (Nov. 1980) ("NUREG-0654").^{2/} NUREG-0654 recommends a capability for State and local implementation of protective measures based on the PAG's and other criteria. NUREG-0654, § II.J.9., at 61. NUREG-0654 also recommends that the State specify the measures necessary to protect the public from consumption of contaminated food.^{3/} Id., § II.J.11., at 64.

Intervenor Reed has relied on various sections of NUREG-0654 at various times: Sections II.J.9. and J.11. in Reed Contention 18, sections "I, J, page 29, lines 10, 11, and 12" in his Answer to Applicant's Interrogatory No. 85, and sections "I, C, page 5, lines 13, 14 and 15" in his Answer to Applicant's Interrogatory No. 87. There is no requirement to

^{2/} NUREG-0654, § I.J.9, at 61, specifically designates the FDA recommendations published at 43 Fed. Reg. 58790 (1978), however, those recommendations were supplanted by those published in the FDA Notice at 47 Fed. Reg. 47073 (1982).

^{3/} Although the discussion of protective measures in the FDA Recommendations and NUREG-0654 are much more detailed and specific than the language of section 50.47(b)(10), NUREG-0654 is advisory in nature and does not project the "legally binding mantle of a regulation." Metropolitan Edison Company (Three Mile Island Station, Unit No. 1), LEP-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). Similarly, the FDA recommendations are "voluntary guidance to State and local agencies." 47 Fed. Reg. at 47074. The ultimate fact of compliance is measured against the mandate of the regulation that:

protective actions for the ingestion exposure pathway EPZ appropriate to the locale have been developed.

10 C.F.R. § 50.47(b)(10).

adhere blindly to the NRC/FEMA guidance in the face of local conditions, even if the guidance is appropriate. See n.3, supra. However, Intervenor Reed relies exclusively on NUREG-0654 sections, some of which are inappropriate for this subject.

Applicant agrees that sections II.J.9. and J.11. are both appropriate and applicable as guidelines in evaluating the State and local emergency response plans submitted. Section I.C. is neither appropriate nor applicable since none of the "planning standards identified" relate to the subject matter of Contention 18 except in the most general and tangential nature and cannot contribute useful guidelines for an evaluation of the emergency response plans involved here. Section I.J., lines 10, 11, and 12, simply states that: "The plans should make clear what is to be done in an emergency, how it is to be done and by whom." This guidance is useful only for the most general evaluation of the submitted response plans and lacks the specificity necessary for a thorough review.

Finally, in assessing these response plans, their content and effect must be measured as an integrated whole and not as the sum of five discrete and separate responses. This is especially true in a case, such as here, where the State is being relied on for special expertise and resources not available at the county level. "The NRC/EPA Task Force Report on Emergency Planning (NUREG-0396, EPA 520/1-78-016) anticipates that State, rather than local, response organizations

will be primarily responsible for the planning associated with the ingestion exposure pathway." NUREG-0654, § I.D.2, at 11.

Consequently, in deciding this summary disposition motion the State and County Emergency Response Plans should be viewed as an integrated effort to develop protective plans appropriate to the locale in order to prevent the consumption of contaminated foodstuff. They may be reviewed using the general guidelines of the FDA's Recommendations and NUREG-0654, §§ II.J.9. and J.11., but should only be measured against the requirement of 10 C.F.R. § 50.47(b)(10) that "protective actions for the ingestion exposure pathway EPZ appropriate to the locale have been developed." As shown below, however, the State and County plans completely satisfy the regulatory provisions as well as the recommendations of FEMA and the FDA.

III. Argument

The standard for summary disposition of intervenor John G. Reed's Contention 18, as set out in Applicant's Memorandum of Law, requires that the intervenor oppose the Applicant's motion by establishing a genuine issue of material fact. Should intervenor fail to sustain his burden of production, Applicant is entitled to a favorable summary disposition as a matter of law. Since, as shown below, there is full and proper compliance with the requirement of 10 C.F.R. § 50.47(b)(10) by the State and local plans, there can be no such genuine issue of material fact.

The State Plan combined with the Callaway/Fulton, Gasconade, Montgomery and Osage Radiological Emergency Response Plans comply not only with the dictates of section 50.47(b)(10), but with the guidance contained in the FDA Recommendations and NUREG-0654 §§ II.J.9. and J.11. as well.

The responsibilities of the State are clearly outlined in the State Plan regarding human food and animal feeds. The Deputy Director, Missouri Department of Agriculture, in cooperation with the Division of Health - Bureau of Radiological Health ("BRH"), is responsible for the overall coordination, implementation and operation of plans concerning the inspection of foods for contamination and the control of agricultural produce. State Plan, Annex A, at AGR3. These plans for the inspection of food and control of agricultural products include sampling responsibilities and resources to detect contamination, id. at AGR7, DNR1-5, SWP2, sampling logistics, id. at AGR6, Annex B, at B10, B13-14, and provisions for maps containing detailed crop information by reference to map location and availability, id. at AGR6, AGR12. Surface water supplies within the 50-mile EPZ are listed and those water facilities utilizing open basins or aeration are identified. Id. at DNR8-9. A current list of food chain interruption points in the 50-mile zone^{4/} specifies milk

^{4/} In order to create the fullest possible compliance with the FDA guidelines, the lists include some facilities beyond the 50-mile zone in recognition of the fact that population exposure by ingestion "is a function of the animal feed and

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plants, id. at AGR13, dairy herds, id. at AGR14-28, egg processors and distributors, id. at AGR29-33, grain warehouses, id. at AGR34-38, commercial fruit and vegetable producers, id. at AGR39, and meat processing plants by inspection category id. at AGR40-43, with accompanying maps, id. at AGR44-49.

The State Plan adopts the PAG's recommended by the FDA, see id., Annex B, at B10; 47 Fed. Reg. at 47,081, and equivalent or lower levels for individual radionuclides, State Plan, Annex B, at B11-B12; 47 Fed. Reg. at 47,081-82.

The State Plan also establishes procedures and methods for the communication of accident notification and protective measures, and designates personnel resources to carry out this task. State Plan, Annex A, at AGR4-5. This communication system combines with the measures listed above to form the "capability for implementing protective measures based upon protective action guides and other criteria" recommended by NUREG-0654, § II.J.9., at 61. This combination of task planning and resource identification also eliminates any "communications" grounds for Intervenor Reed's Contention 18 by the intervenor's own interpretation.^{5/}

(Continued)

human food production of any given area and is not limited by distance from the source of contamination." 47 Fed. Reg. at 47076 (1982).

^{5/} Mr. Reed viewed the communication segment of Contention 18 as encompassing a need to "provide the information to these people within the 50-mile EPZ" of food and feed contamination by "potentially harmful radionuclides." Reed Dep. Tr. at 299.

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The State Plan exceeds the requirement of 10 C.F.R. § 50.47(b)(10) that protective actions be developed for the ingestion pathway EPZ suitable to the locale. The State's detailed planning is precisely along those lines recommended in NUREG-0654, § II.J.11. which advises:

Each State shall specify the protective measures to be used for the ingestion pathway, including the methods for protecting the public from consumption of contaminated foodstuffs. This shall include criteria for deciding whether dairy animals should be put on stored feed. The plan shall identify procedures for detecting contamination, for estimating the dose commitment consequences of uncontrolled ingestion, and for imposing protection procedures such as impoundment, decontamination, processing, decay, product diversion, and preservation. Maps for recording survey and monitoring data, key land use data (e.g., farming), dairies, food processing plants, water sheds, water supply intake and treatment plants and reservoirs shall be maintained. Provisions for maps showing detailed crop information may be by including reference to their availability and location and a plan for their use. The maps shall start at the facility and include all of the 50-mile ingestion pathway EPZ. Up-to-date lists of the name and location of all facilities which regularly process milk products and other large amounts of food or agricultural products originating in the ingestion pathway Emergency Planning Zone, but located elsewhere, shall be maintained.

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Reed acknowledged that there are limits of reasonableness in such undertakings: "I think there is a limit to what you can honestly do." Reed Dep. Tr. at 300. Intervenor Reed characterized the communications aspect of this contention as one directed at establishing a "minimum effort" to communicate necessary warnings regarding foodstuffs, animal feeds, and agricultural produce. Id.

Intervenor Reed indicated that his Contention 18 was simply directed at a cataloging of those resources necessary to implement the planning measures. Reed Dep. Tr. at 287. The State Plan's exacting survey of dairy and food facilities will function not only as a source of alert information but as an alternative source list for food and feeds, within and beyond the 50-mile zone. State Plan, Annex A, at AGR12-49. The survey far exceeds the parameters of intervenor's Contention 18: "I wouldn't expect an excessive amount of detail, as long as there is a logical process." Reed Dep. Tr. at 288. Consequently, the State Plan meets or exceeds the regulatory requirements of 10 C.F.R. § 50.47(b)(10), the guidance contained in NUREG § II.J.11., and the substance of Intervenor Reed's Contention 18.^{6/}

The county plans individually address the issue of human food and animal feeds contamination by:

- (1) establishing protective measures, Callaway/Fulton Plan, Annex I, at I-9; Gasconade Plan, Annex I, at I-8; Montgomery Plan, Annex I, at I-8; Osage Plan, Annex I, at I-8,
- (2) identifying the organizations responsible for food and feed sampling, communication and protective measures,

^{6/} The State and county plans are not required to provide additional protective measures for livestock and produce. "(A) general evacuation of a rural area will almost certainly result in hardships to farmers with livestock.... However, the Board must concern itself primarily with the public health and safety, rather than with property." Metropolitan Edison Company, LBP-81-59, 14 N.R.C. 1211, 1680 (1981), aff'd, ALAB-697, 16 N.R.C. ___, slip op. at 19-20 (Oct. 22, 1982).

Callaway/Fulton Plan, Annex A, at A-2 & 3, Annex I, I-8, 9 & 10; Gasconade Plan, Annex A, at A-2, Annex I, I-8 & 9; Montgomery Plan, Annex A, at A-2, Annex I, I-8 & 9; Osage Plan, Annex A, at A-2, Annex I, I-8 & 9, and

(3) identifying the lead organization, BRH, for all radiological dose projections, Callaway/Fulton Plan, Annex J, at J-3; Gasconade Plan, Annex J, at J-3; Montgomery Plan, Annex J, at J-3; Osage Plan, Annex J, at J-3.

The counties must, of necessity, rely on the State for the expertise embodied in the Bureau of Radiological Health and the Missouri State Department of Agriculture. However, this is a rational approach to integrated operational planning and wholly consistent with the NUREG-0654 guidelines that "roles, functions and responsibilities" are "best defined by the various parties involved." NUREG-0654, Appendix 5, at 5-2. Intervenor Reed is simply in error, legally and factually, when he asserts that "local officials have the primary responsibility from zero to 10 miles." Reed Dep. Tr. at 287. In this subject area, the primary role is assumed by the named state agencies because of the particular training and expertise necessary. NUREG-0654, § I.D.2., at 11; State Plan at AGR3, DNR1-5.

The counties are not required by 10 C.F.R. § 50.47(b)(10) to establish an independent and detached capability on their own to fulfill all protective planning and actions for human food and animal feeds. See NUREG-0654, § I.D.2., at 11. The regulation simply requires protective actions to have been

developed which are appropriate for the ingestion exposure pathway EPZ locale. "NRC/FEMA review these plans to ensure that the standards of 10 C.F.R. 50 § 50.47 are met rather than which organization performs the function." Letter from Richard C. DeYoung, Director of Inspection and Enforcement, to John G. Reed (June 17, 1982) (Rejecting the need for redundancy in State/local emergency planning). See Attachment 1 hereto.

The totality of the planning accomplished by the State and county governments easily exceed that required of them concerning the ingestion exposure pathway EPZ.

Unlike the much smaller plume EPZ where evacuation or sheltering from the plume may be a matter of immediacy, protective action in the 50-mile radius ingestion EPZ need not be as immediate. Contamination would be traceable to ingestion, not to external radiation exposure, and the conservative response of a broad-scale foodstuffs quarantine or disposal is always available. Moreover, the kinds of ingestion EPZ protective action that would be suggested -- such as quarantining or disposing of certain foodstuffs in designated areas -- are highly site and accident specific; hence, they are less amenable to planning in advance of an accident than the comparable responses of sheltering or evacuation that are appropriate for the plume EPZ.

Southern California Edison Company, et al. (San Onofre Nuclear Generating Station, Units 2 and 3), ALAB-717, 17 N.R.C. ____, slip op. at 51 (Mar. 4, 1983). The sampling, communications and protective action planning embodied in the county plans, supported by the extensive surveys and provision for radiological exposure evaluation in the State Plan, completely establish the necessary emergency response measures.

Consequently, when viewed as a product of the integrated planning effort they actually represent, the State and county plans fully comply with the regulatory requirement of 10 C.F.R. § 50.47(b)(10) by developing plans for the ingestion exposure pathway EPZ, establishing criteria based on the FDA recommendations for exposure rates, and fulfilling all the guidelines contained in NUREG-0654, §§ II.J.9. and J.11. Insofar as Intervenor Reed's Contention 18 exceeds these requirements and guidelines, it is in error, and where Contention 18 comports with them, its criticisms have been satisfied.

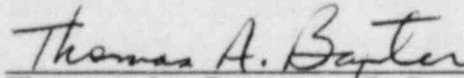
IV. Conclusion

The State and county plans submitted fully provide the necessary protective measures for human food and animal feeds according to published requirements and guidelines. Satisfaction of these requirements, guidelines and the valid segments of Contention 18 therefore eliminates any remaining

genuine issue of material fact and entitles Applicant to a favorable summary decision as a matter of law.

Respectfully submitted,

SHAW, PITTMAN, POTTS & TROWBRIDGE



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May 20, 1983

JUN 17 1982

Mr. John G. Reed
RFD #1
Kingdom City, Missouri 65252

Dear Mr. Reed:

This is in response to your letter of May 18, 1982 requesting a formal Commission decision on the interpretation of the symbol X as used in the guidance criteria in NUREG-0654/FEMA-REP-1, Rev. 1, "Response Plans and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants". Because this matter may be the subject of litigation before an NRC licensing board and because the Commission may eventually have to review the licensing board's decision, the Commission is unable to give you the formal ruling you request. However, the standards used by the NRC staff to assure that adequate protective measures are taken to protect the health and safety of the public in the event of a radiological emergency are specified in the Code of Federal Regulations, Chapter 10, Part 50, §50.47. These standards are reiterated in NUREG-0654/FEMA-REP-1, Rev. 1 and are addressed by specific guidance criteria which may be used by the licensee, State, and local planners to formulate integrated emergency plans to meet these standards. These guidance criteria provide an acceptable way to meet the standards, however, it should be recognized that they are not requirements and that the standards may be met in other ways.

The party (State, local, licensee) with responsibility to address a specific criterion is indicated in the guidance criteria checklist by an X. In many cases, the NRC licensee, the State, and local authorities are all called upon to provide material to address the same criteria. Where more than one X is indicated, it should not be interpreted to mean that redundant capabilities are required. This consolidated guidance is intended to allow all parties to recognize and understand each other's capabilities, responsibilities and obligations. It further allows NRC/FEMA reviewers to analyze plans and probe the relationship of one plan with another. If weaknesses in one plan are identified but compensated for in another, an adequate state of emergency preparedness can still exist. It is recognized that capabilities, responsibilities and obligations vary widely among State and local governments. NRC/FEMA review these plans to ensure that the standards of 10 CFR 50 §50.47 are met rather than which organization performs the function.

Sincerely,

Richard C. DeYoung, Director
Office of Inspection and Enforcement