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June 6, 1985

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

DOCKETED  
USNRC

BEFORE THE DIRECTOR, OFFICE OF INSPECTION AND ENFORCEMENT

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In the Matter of )  
UNION ELECTRIC COMPANY )  
(Callaway Plant, Unit 1) )

Docket No. 50-483  
(10 C.F.R. § 2.206)

OFFICE OF SECRETARY  
DOCKETING & SERVICE  
BRANCH

LICENSEE'S RESPONSE TO SHOW CAUSE  
PETITION OF MISSOURI COALITION  
FOR THE ENVIRONMENT AND KAY DREY

I. Introduction

The Missouri Coalition for the Environment and Kay Drey<sup>1/</sup> (Petitioners) have filed with the Director of Nuclear Reactor Regulation and the Director, Office of Inspection and Enforcement a "Show Cause Petition Requesting Suspension or Revocation of Operating License for Union Electric Company's Callaway Nuclear Power Plant, Unit One," dated March 25, 1985.<sup>2/</sup> On May

<sup>1/</sup> Kay Drey previously petitioned to intervene in the now-complete Callaway operating license proceeding, but was found by the Licensing Board not to have standing. Union Electric Co. (Callaway Plant, Unit 1), unpublished Memorandum and Order Ruling on Requests for Hearing, Petitions for Intervention and Order of Special Prehearing Conference (Feb. 5, 1985).

<sup>2/</sup> Exhibit C to the Petition, however, is dated March 26, 1985, and the Petition's signature page is dated March 27, 1985.

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10, 1985, the Director, Office of Inspection and Enforcement, requested that Licensee Union Electric Company (UE) respond to the Petition under oath or affirmation, pursuant to 10 C.F.R. § 50.54(f).<sup>3/</sup> The Director asked that such response be provided by no later than June 7, 1985. In accordance with the request, Licensee provides this response, which includes the attached affidavit of Donald F. Schnell, Vice President, Nuclear, of Union Electric Company.<sup>4/</sup>

The petition is based on a recent determination by UE that the certifications of a number of QC inspectors were questionable. Petitioners' account of the extent and ramifications of this determination, however, has apparently been gleaned from several newspaper articles and is inaccurate in many respects. Therefore, the attached affidavit describes the events in question and UE's corrective actions. As discussed below, these facts demonstrate that, under applicable legal standards, no basis exists for the issuance of a show-cause order.

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<sup>3/</sup> The Director also issued a notice of "Receipt of Request for Action Under 10 C.F.R. 2.206," in which he acknowledged receipt of the Petition and indicated that appropriate action will be taken on it within a reasonable time. 50 Fed. Reg. 20,511 (1985).

<sup>4/</sup> Mr. Schnell's affidavit satisfies the Director's request for a response pursuant to 10 C.F.R. § 50.54(f).

II. Standards for Deciding  
Whether a Show Cause Proceeding  
Should be Initiated

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Section 2.206 of the Commission's regulations provides a mechanism whereby members of the public may request initiation of an enforcement action to modify, suspend, or revoke a license, or for such other action as may be proper. It also vests authority in the director of the appropriate NRC office to decide whether to institute an enforcement action by the issuance of a show cause order. The only criterion set forth in the rule itself for judging the sufficiency of a petition is the requirement that "[t]he requests shall specify the action requested and set forth the facts that constitute the basis for the request." See 10 C.F.R. § 2.206(a).

The apparent reason for the absence of a more specific standard in the regulation is that the decision to institute an enforcement action is not an adjudicative one, but rather is a matter of "prosecutorial" discretion. See Consolidated Edison Company of New York, Inc. (Indian Point Units 1, 2 and 3), CLI-75-8, 2 N.R.C. 173, 175 (1975). Nevertheless, the Commission has in previous decisions provided guidance delimiting the exercise of this discretion.

In Indian Point, supra, the Commission affirmed a Director's decision denying a 2.206 petition. In so doing, the Commission stated that "[the Director] correctly understood that a show cause order would have been required had he reached the

conclusion that substantial health or safety issues had been raised," and that ". . . a mere dispute over factual issues does not suffice" as a basis for issuance of such an order. Indian Point, supra, CLI-75-8, 2 N.R.C. at 176 (1975). This standard has been acknowledged in dicta by the D.C. and Seventh Circuits. Lorion v. NRC, 712 F.2d 1472, 1475 (D.C. Cir. 1983), rev'd on other grounds sub nom., Florida Power & Light Co. v. Lorion, 105 S. Ct. 1598 (1985); Rockford League of Women Voters v. NRC, 674 F.2d 1218, 1222 (7th Cir. 1982).

The Commission has reiterated the "substantial health and safety issue" standard in Northern Indiana Public Service Company (Bailly Generating Station, Nuclear-1), CLI-78-7, 7 N.R.C. 429, 433 (1978), aff'd, Porter County Chapter v. NRC, 606 F.2d 1363 (D.C. Cir. 1979). In that case, the Commission also rejected a claim that the Director erred in failing to permit petitioner to comment on, respond to, or cross-examine the views of the NRC Staff:

[The Director] is not required to accord presumptive validity to every assertion of fact, irrespective of its degree of substantiation, or to convene an adjudicatory proceeding in order to determine whether an adjudicatory proceeding is warranted. Rather, his role at this preliminary stage is to obtain and assess the information he believes necessary to make that determination. Provided he does not abuse his discretion, he is free to rely on a variety of sources of information, including staff analyses of generic issues, documents issued by other agencies, and the comments of licensees on the factual allegations.

Id. at 432-37.

The Director of Inspection and Enforcement has recognized the "substantial health and safety" standard and has applied it to 2.206 petitions raising quality assurance concerns. See, e.g., Washington Public Power Supply System (WPPSS Nuclear Project No. 2), DD-84-7, 19 N.R.C. 899, 923 (1984). In this respect, the Director held that isolated deficiencies in a licensee's quality assurance program do not necessarily give rise to a significant safety concern. Id. at 905-06, citing Union Electric Co. (Callaway Plant, Unit 1), ALAB-740, 18 N.R.C. 343, 346 (1983).<sup>5/</sup> Although the Director's decision in WPPSS and the Appeal Board's decision in Callaway both addressed construction QA programs, those decisions suggest that the appropriate inquiry into claimed deficiencies in an operations QA program is (1) whether all ascertained deficiencies have been cured and (2) whether there has been a breakdown in quality assurance procedures sufficient to raise legitimate doubt as to the overall integrity of the facility.

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<sup>5/</sup> In Callaway, the Appeal Board recognized occasional quality assurance lapses as inevitable, and it held that in examining claims of quality assurance deficiencies, one must look to the implications of those deficiencies in terms of safe plant operation.



### III. Issuance of a Show Cause Order is Unwarranted

As recounted more fully in the attached affidavit of Mr. Schnell, the operating QA and QC departments recently reviewed the certifications of all present and former QC inspectors who were certified under the operating QA program (OQAP) -- 247 certifications involving 85 present and former QC inspectors. Of these, 207 certifications fully complied with applicable requirements; eleven were superfluous (i.e., the certified inspector had never performed inspections within the scope of the certification); and 29 certifications involving 22 inspectors were designated as being questionable. See Schnell Affidavit, ¶ 18.

The main cause for the issuance of the questionable certifications was the latitude available to QC supervision under the applicable standard and procedures to define "related experience" in determining an individual's qualification. ANSI/ASME N45.2.6-1978 recommends periods of "related activity in equivalent inspection, examination, or testing" as a criterion for varying levels of qualification, but it does not explicate what types of activity are sufficiently related to be counted. The OQAP QC procedures provided no elaboration.

In evaluating the certifications, UE's QA department formulated its own criteria defining acceptable "related experience." It was the application of these criteria that brought into question the certifications. See Schnell Affidavit, ¶¶ 14, 19.

Petitioners greatly exaggerate the extent of the QC certification issue. First, Petitioners do not distinguish between the construction QA and operations QA programs. These were separate programs administered by different organizations. The QC inspector certifications issued by the plant constructor, Daniel International Corporation (DIC), under the construction QA program were generally task-oriented and limited, unlike those certifications issued under the OQAP that were found to be questionable. The construction QC inspector certification program has been audited by DIC, by the NRC, by the Authorized Nuclear Inspector, and by UE, all of whom found it satisfactory. See Schnell Affidavit, ¶¶ 4-5. The work evaluated by DIC QC inspectors under the construction QA program -- in particular plant construction -- has therefore not been compromised by the discovery of questionable OQAP certifications.

Second, Petitioners mischaracterize the work that was performed under the questionable certifications. Petitioners assert that "testing" has been compromised. See e.g., Petition at 2. However, equipment performance and post maintenance testing are conducted not by UEQC but by operational personnel qualified to ANSI/ANS 3.1 and, if licensed, to 10 C.F.R. Part 55. Material testing is performed by UEQC under the OQAP in the civil and welding areas in support of operational activities, but is minimal. Schnell Affidavit, ¶ 4. Petitioners assert that the questionable certifications "cast doubt upon the validity of at least 12,000 work inspections." Petition at 3.

The number of tasks performed by QC inspectors with questionable certifications, however, was about 1,450.<sup>6/</sup>

Third, Petitioners allege that the inspectors with questionable certifications performed inspections for which they were unqualified. Petition at 2. However, the fact that certain certifications were overbroad does not mean that the subject QC inspectors were not qualified to perform any type of inspection; most in fact had been previously and properly certified as being qualified to conduct a narrower range of inspections. See Schnell Affidavit, ¶ 19. Moreover, UE has conducted a comprehensive review of the work activity of these inspectors. That review demonstrated that there was no adverse effect on plant hardware. While some activities were not examined further because of safety insignificance, subsequent testing, or other program controls on the work, the review found no instance where a QC inspector performed a test or inspection for which he was unqualified. See Schnell Affidavit, ¶¶ 16, 18-22.

It is therefore evident that the integrity of the plant and its safe operation have not been compromised. The QC

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<sup>6/</sup> Petitioners' figure of 12,000 is derived from an initial estimate of the total number of work authorizing documents that UE would have to review to identify the work that was performed by the inspectors with questionable certifications. The actual number of work authorizing documents turned out to be less -- about 10,000 documents. Of these, about 1,450 involved QC inspectors with questionable certifications. See Schnell Affidavit, ¶ 20.



inspectors with questionable certifications were capable of performing the work assigned to them. In addition, while quality control is a very important means of assuring quality of work activities, it is not the sole means. Only qualified, trained workers perform the activities, and these workers perform their activities in accordance with approved practices or procedures. Their work is periodically monitored by first-line supervisory personnel who have the direct responsibility to assure that work is correctly performed. See ANS-3.2/ANSI N18.7-1976, "Administrative Controls and Quality Assurance for the Operational Phase of Nuclear Power Plants," § 5.2.17. Further assurance is provided by QA audits, and by external reviews performed by the Authorized Nuclear Inservice Inspector (ANII), Authorized Nuclear Inspector (ANI), the American Nuclear Insurer's inspector, and the NRC.

Petitioners also fault UE for failing to identify the problem sooner. Petitioners suggest that QA was derelict in its auditing capacity and permitted the certification problem to persist for over four years. Petition at 2, 4-5. UE's QA department, however, was not inactive. QA audited and surveilled the certification of QC personnel during the formulative stage of the QC department in 1981 and 1982. All but one of the questionable certifications were issued after these initial audits. QA also audited qualification of QC NDE (non-destructive examination) personnel in July, 1984, under the fully implemented OQAP. No deficiencies in NDE certifications were identified. See Schnell Affidavit ¶¶ 9, 19.

In the same vein, Petitioners assert that QA received complaints from QC inspectors in December, 1984, but did not commence an audit for over two months. Petition at 3. This assertion is untrue. In December, 1984, the Assistant Manager, Support Services, held meetings with a number of QC personnel to allow them to air concerns. The only concerns identified during these meetings were management and personnel concerns. The QC personnel did not express any concerns regarding certification of QC inspectors. Subsequently, on January 25, 1985, one QC inspector brought to QA for the first time a concern related to the present QC certification issue. Within two days QA began its effort to address the matter, and initiated a formal surveillance on February 7, 1985. See Schnell Affidavit, ¶ 13.

Finally, Petitioners allege that "QC inspectors were ordered by an assistant QC supervisor not to seek technical advice and information from other QA personnel." Petition at 3. Although Petitioners offer no citation, it is apparent that they are distorting a statement in one of the newspaper articles which they attach to the petition. Exhibit B to the Petition stated: "Company documents state that on March 10, 1984, quality control supervisor Terry Shaw ordered inspectors to take technical problems to him or to an assistant supervisor before approaching other department managers." The article is referring to a March 10, 1984, memorandum which is attached

hereto as Exhibit A.<sup>7/</sup> The memorandum was issued to ensure that QC problems were brought to QC supervision's attention, not to discourage access to higher levels of management. See Schnell Affidavit, ¶ 11. Any potential misinterpretation of that memorandum has now been eliminated by UE's issuance of a directive clearly stating UE's open-door policy and procedure for resolving differing professional opinions. See Exhibit B hereto.

In conclusion, UE acknowledges that there was a deficiency in its quality assurance program in that its QC procedures could have been more explicit in defining certification criteria. While QA did not discover this deficiency and the questionable certifications earlier, QC personnel did ultimately report the problem to QA as they should have; and when QA was informed of the problem, it acted swiftly and decisively. QA and QC have remedied the programmatic deficiency and have assured that safety has not been compromised. These actions demonstrate that the quality assurance program at Callaway is working; and they belie the existence of a substantial health and safety problem that would warrant issuance of a show cause order.

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<sup>7/</sup> In the Petition's "Conclusions of Law," Petitioners provided a more specific reference to this memorandum, which they claim "reveals that QC management had instituted procedures to discourage access to higher levels of management." Petition at 4.

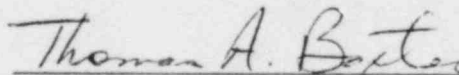
The matter of questionable certifications has been fully investigated by UE and the NRC. The facts are known. Corrective action has already been accomplished to conform the current certification program to the requirements of ANSI N45.2.6-1978; and additional QC program enhancements are being developed. The facts indicate that there has not been a breakdown in the quality assurance program and that the deficiency identified did not raise legitimate doubt as to the overall integrity of the facility. Accordingly, there is neither need nor basis for the issuance of a show cause order.

#### IV. Conclusion

For all of the reasons discussed above, the "Show Cause Petition Requesting Suspension or Revocation of Operating License for Union Electric Company's Callaway Nuclear Power Plant, Unit One" should be denied.

Respectfully submitted,

SHAW, PITTMAN, POTTS & TROWBRIDGE



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David R. Lewis

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Union Electric Company

Dated: June 6, 1985