11/10/80

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	
UNION ELECTRIC COMPANY	)	Docket Nos. STN 50-483
	)	STN 50-486
(Callaway Plant, Units 1 and 2)	)	

NRC STAFF RESPONSE TO: (1) "AMENDED PETITION FOR LEAVE TO INTERVENE AND REQUEST FOR A HEARING OF JOHN G. REED" AND (2) MR. REED'S "REQUEST FOR FREE COPY AND SERVICE"

I.

INTRODUCTION

On August 26, 1980, the Nuclear Regulatory Commission published in the Federal Register (45 Fed. Reg. 56956) notice of opportunity for a hearing on the application for operating licenses for the Callaway Plant, Units 1 and 2. The notice provided, inter alia, that any person whose interest may be affected by the proceeding could submit a petition for leave to intervene in accordance with 10 C.F.R. §2.714 no later than September 25, 1980. On September 10, 1980, the docketing and service branch of the Nuclear Regulatory Commission received a document entitled "Petition" filed by John G. Reed (Petitioner). In a document entitled "Response of the NRC Staff to Petition Filed by John G. Reed," dated September 25, 1980, the Staff recommended denial of the petition without prejudice for the reason that it failed to satisfy the requirements of 10 C.F.R. §2.714. On September 22, 1980, Mr. John G. Reed filed a "Petition for Leave to Intervene" in the above proceeding. On October 16, 1980 the NRC Staff filed its response to the September 22, 1980 petition. In its response, the Staff concluded that Mr. Reed's petition had

satisfied the intervention requirements of 10 C.F.R. §2.714(a)(2) of the Commission's Rules of Practice with respect to a statement of the "interest" of the petitioner, "how that interest may be affected by the results of the proceeding," and the "specific subject matter" or "aspects" of the proceeding with which Mr. Reed sought to intervene. ("NRC Staff Response To Petition For Leave To Intervene Of John G. Reed," p. 7 (October 16, 1980).) Applicant in its response took the position that Mr. Reed's September 22, 1980 pleadings did not meet the intervention requirement of 10 C.F.R. §2.714 ("Applicant's Answer To The Petition Of John G. Reed For Leave To Intervene," p. 2 (October 10, 1980).)

On October 22, 1980, Mr. Reed filed his "Amended Petition For Leave To Intervene And Request For A Hearing" (hereafter "amended petition"). In the amended petition, Mr. Reed expresses in more detail his concerns emanating from the proximity of the proposed Callaway facility to Mr. Reed's home and the schools where his children are enrolled. The amended petition also describes in more particular detail the petitioner's concerns with the adequacy of emergency planning. Attached to the petition are the affidavits of a number of local officials asserting that the proposed Callaway facility is located within a radius of ten miles from areas subject to their jurisdiction as local officials and that "no funding or assistance has been received from . . . [the Applicant] for planning purposes or acquisition of equipment and other related materials required to satisfy the requirements of NUREG-0654/FEMA-REP-1." Included in the amended petition are five contentions. In its November 5, 1980 answer to the amended petition for leave to intervene, Applicant states that it ". . . believes

Mr. Reed adequately has demonstrated his standing to take part in this proceeding" (Applicant's Answer To The October 23, 1980 Amended Petition For A Hearing . . .", p. 2 (November 5, 1980)). However, Applicant states "in light of Mr. Reed's right to amend proposed contentions up to fifteen days prior to the first (or special) prehearing conference, Applicant reserves its right to contest the admissibility of the contentions . . ." (Id., p. 2).

II.

DISCUSSION

Inasmuch as the Staff previously concluded that Mr. Reed had satisfied the "interest," "standing" and "aspect" requirements of 10 C.F.R. §2.714(a) prior to the filing of the amended petition, the supplementing of those requirements in the amended petition does not change the Staff's prior conclusion. Therefore, the Staff will now focus upon the contentions submitted by Mr. Reed in the amended petition, as 10 C.F.R. §2.714(b) provides, in pertinent part:

> A petitioner who fails to file a supplement which satisfies the requirements of this paragraph with respect to at least one contention will not be permitted to participate as a party.

A. Admissibility of Contentions in General

In order for proposed contentions to be found admissible, they must fall within the scope of the issues set forth in the Notice of Hearing initiating

the proceeding, and comply with requirements of 10 C.F.R. §2.714(b) and applicable Commission case law. Northern States Power Co. (Prairie Island, Unit Nos. 1 and 2), ALAB-107, 6 AEC 188, 194 (1973), aff'd, BPI v. Atomic Energy Commission, 502 F.2d 424, 429 (D.C. Cir. 1974); Duquesne Light Co. (Beaver Valley, Unit No. 1), ALAB-109, 6 AEC 243, 245 (1973). 10 C.F.R. §2.714(b) requires that a list of contentions which intervenors seek to have litigated be filed along with the bases for those contentions set forth with reasonable specificity.[1/] The purposes of the basis requirements of 10 C.F.R. §2.714 are (1) to assure that the contention in question does not suffer from any of the deficiencies enumerated in the Peach Bottom decision below, (2) to establish sufficient foundation for the contention to warrant further inquiry of the subject matter in the proceeding and, (3) to put the other parties sufficiently on notice "so that they will know at least generally what they will

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1/ A contention must be rejected where:

(a) it constitutes an attack on applicable statutory requirements;

(b) it challenges the basic structure of the Commission's regulatory process or is an attack on the regulations;

(c) it is nothing more than a generalization regarding the intervenor's views of what applicable policies ought to be;

(d) it seeks to raise an issue which is not proper for adjudication in the proceeding or does not apply to the facility in question; or

(e) it seeks to raise an issue which is not concrete or litigable.

Philadelphia Electric Co. (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-216, 8 AEC 13, 20-21 (1974).

have to defend against or oppose." Peach Bottom, supra at 20. From the standpoint of basis, it is unnecessary for the petition "to detail the evidence which will be offered in support of each contention." Mississippi Power & Light Co. (Grand Gulf Nuclear Station, Units 1 and 2), ALAB-130, 6 AEC 423, 426 (1973). Furthermore, in examining the contentions and the bases therefore, a licensing board is not to reach the merits of the contentions. Duke Power Co. (Amendment To Materials License SNM-1773 - Transportation of Spent Fuel From Oconee Nuclear Station for Storage at McGuire Nuclear Station), ALAB-528, 9 NRC 146, 151 (1979); Peach Bottom, supra at 20; Grand Gulf, supra at 426.

Thus, at the petition stage, although intervenors need not establish the validity of their contentions and the bases therefore, it is incumbent upon intervenors to set forth contentions and the bases therefore which are sufficiently detailed and specific to demonstrate that the issues raised are admissible and that further inquiry is warranted, and to put the other parties on notice as to what they will have to defend against or oppose.

A recent Appeal Board decision governing the admissibility of contentions is Houston Lighting and Power Co. (Allens Creek Nuclear Generating Station, Unit 1, ALAB-590, 11 NRC 542 (1980). In Allens Creek, the Appeal Board overturned the Licensing Board's rejection, in an unpublished Order,[2/] of a contention

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[2/] Houston Lighting and Power Co. (Allens Creek Nuclear Generating Station, Unit 1), LBP-80-___, (March 10, 1980) (Slip. Op.).

alleging that a marine biomass farm would be environmentally preferable to the proposed Allens Creek facility. According to the Appeal Board, the Licensing Board erred in holding that as a requisite to putting into litigation the marine biomass alternative (and the Staff's failure to have considered it), the petitioner was required not merely to allege that the alternative would be environmentally preferable but also to explain why that is so. 11 NRC at 547. The Appeal Board held that the holdings cannot be squared with its 1973 decision in Grand Gulf, ALAB-130, supra, and therefore, the teachings of Grand Gulf mandated reversal of the Licensing Board's determination. More specifically, the Appeal Board stated that all that was required at the petition stage was that the petitioner:

> . . . state his reasons (i.e., the basis) for his contention that the biomass alternative should receive additional consideration. That responsibility was sufficiently discharged by his references to Project Independence and his assertion respecting the environmental superiority of a marine biomass farm. 11 NRC at 548-549.

It is noteworthy that the Appeal Board's determination that the petitioner must be admitted to the proceeding on the strength of his contention:

> . . . does not carry with it any implication that we view the contention to be meritorious . . . . 11 NRC at 549.

Moreover, the Appeal Board emphasized that whether the petitioner will be able to prove the assertions underlying the contention is quite beside the point at this preliminary stage of the proceeding. 11 NRC at 549. According to the Appeal Board, it does not follow that this contention will have to be taken up at that forthcoming evidentiary hearing on the Allens Creek application, since:

> . . . the Section 2.749 summary disposition procedures provide, in reality as well as in theory, an efficacious means of avoiding unnecessary and possibly time-consuming hearings on demonstrably insubstantial issues . . ." 11 NRC at 550.

ALAB-590 did not purport to alter the existing precedent governing the admissibility of contentions. Rather, it merely emphasizes that in ruling on the admissibility of contentions, a licensing board is not to venture beyond the contention and its stated basis into the merits of the contention. All that a licensing board need determine is whether there is a reason (basis) for the contention set forth with reasorable specificity. Any question concerning the validity of the contention or of its basis must be left for consideration when the merits of the controversy are reached, i.e., through summary disposition or in the evidentiary hearing.

B. Mr. Reed's Contentions

Mr. Reed's first contention states:

> Applicant has not made sufficient arrangements with local governments, nor local agencies and organizations to meet the requirements of 10 C.F.R. Part 50, Section 50.47(b). Issuance of an operating license is prohibited by 10 C.F.R., Part 50, Section 50.47(c)(1). 3/

In the "Discussion" section of the amended petition, Mr. Reed states that Union Electric Company has provided "neither aid nor funding . . . for the development and

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3/ Amended Petition, p. 5.

implementation of adequate emergency response plans" (Amended Petition, p. 5) and Mr. Reed further alleges that local governmental entities lack sufficient funds to meet NRC requirements as a result of this "no local authorized planning has been initiated." (Id.) The Staff believes that before this contention is admitted, in order that it be made clear, that Mr. Reed be required to explain what specific actions that have not to date been undertaken by the Applicant would, in Mr. Reed's view, constitute "sufficient arrangements . . . to meet the requirements of 10 C.F.R. §50.47(b)." Such specification may be made at any time as long as it is fifteen days prior to the first or special prehearing conference. 10 C.F.R. §2.714(b).

Mr. Reed's second contention is:

> As of 02 June 1980, no funding for planning purposes or acquisition of equipment and other related materials required in NUREG 0654 FEMA-REP-1 have been received by the State of Missouri and State "Interim Nuclear Accident Plan" will not be completed until August 1981 (see Attachment 3). (Letter obtained from LPDR, Fulton, MO.) Applicant cannot meet the requirements of 10 C.F.R, Part 50, Section 50.33(g). (amended petition, p. 6).

In support of this contention, Mr. Reed has appended a letter dated June 2, 1980 from the Director, Missouri Department of Public Safety to the Regional Director of the Federal Emergency Management Agency. The final paragraph of the letter provides that neither state nor local governments have received funding from private utilities for emergency planning purposes.

10 C.F.R. §50.33(g) was deleted from the Commission's regulations at 34 Fed. Register 6036. Accordingly, the Staff believes that Mr. Reed should be afforded an opportunity to withdraw or refile this contention if he so chooses.

Mr. Reed's third contention provides:

> Applicant's SNUPPS - FSAR, Volume 5, Appendix 13.3A (13.3A.5.4) and Missouri State Emergency Operations Plan, Part 3, Section B, "Nuclear Emergency Assistance Plan," prepared by the Department of Public Safety, DPOO, dated 23 May 1979, do not adequately provide for the protection of public health and safety in the event of a radiological emergency at the Callaway Plant. See 45 FR 55402, pub. 8/19/80; eff. 11/3/80, quoted in part below:
>
> > "- - -. No new operating license will be granted unless the NRC can make a favorable finding that the integration of onsite and offsite emergency planning provides reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency. - - - - -" 4/

In the discussion of this contention, Mr. Reed states the SNUPPS Final Safety Analysis Report references the fact that the Governor of Missouri has delegated to the state Department of Public Safety, Disaster Planning and Operations Office responsibilities in the event of a radiological emergency (amended petition, p. 7). Mr. Reed states that the state agency has in essence re-delegated that authority to local government. Mr. Reed complains that the FSAR does not mention the role of local government which he alleges ". . . presents a situation devoid of practical emergency response needed to protect the public health and safety and prevent damage to . . . livestock and crops" (amended petition, p. 8). Mr. Reed contends that 10 C.F.R., Part 50, Appendix E requires the FSAR to ". . . incorporate information about the emergency response rates of supporting organizations and off-site agencies." (amended petition, p. 8). Mr. Reed complains that this omission ". . . is the result of failure of Union Electric

4/ Amended petition, p. 6.

Company, and the State of Missouri to initially include local governments in the planning process." (amended petition, pp. 7-9). In light of these particulars, the Staff believes that this contention is sufficiently relevant and specific to be admitted for purposes of discovery in this proceeding.

Mr. Reed's fourth contention provides:

> Funding of local government to meet radiological safety response capability has not been adequately addressed by NRC, FEMA, or other Federal Agency. Failure to resolve the problem of funding for emergency planning and response capability at the local level of government will result in a placing of responsibility for supporting commercial nuclear power plants upon governmental jurisdictions which do not have the financial ability to meet established NRC criteria for the protection of public health and safety. This is a contradiction of Commission policy and intent (PS-31, 44 FR 61123, 10/23/79). To defer action on this matter until after the Callaway Plant is in operation can adversely affect the health and safety of the public as regards any radiological incident due to operation of this facility.

In the discussion following this contention, Mr. Reed quotes from NUREG-0553, "Beyond Defense-In-Depth" published in October, 1979 as well as other publications. Mr. Reed's basic position is that it is Union Electric's ". . . responsibility to fund the entire administrative and operational phases of the safety program." (Amended petition, p. 10). The Staff believes that this contention has been adequately framed for admission for purposes of discovery.

In light of the foregoing discussion, it is the Staff's position that Mr. Reed has fully satisfied the requirements of 10 C.F.R. §2.714 by filing in the amended petition, at least one good contention, and that he should be admitted

as a party to this proceeding. Accordingly, Mr. Reed's alternate request that he be granted intervention status as a matter of discretion would, in the Staff's view, now be moot. Mr. Reed has also requested, in the alternative, the right to make a limited appearance pursuant to 10 C.F.R. §2.715 of the Commission's Rules of Practice. Notwithstanding the fact that the Staff believes that Mr. Reed has satisfied the intervention requirements of 10 C.F.R. §2.714, if Mr. Reed elects not to bear the responsibilities of a full party, including the obligation to respond to pleadings and discovery requests, the Staff does not oppose Mr. Reed's alternate request to participate as a limited appearee.

C. Request For Free Copy and Service

Mr. Reed has also requested ... copying service "for all future documents" which he may file in this proceeding. Pursuant to 10 C.F.R. §2.714 of the Commission's Rules of Practice a party other than the Applicant may request that the NRC copy and serve the following documents upon the other parties to certain proceedings, including an operating license proceeding:

a. the party's testimony,

b. responses to discovery requests,

c. proposed findings and conclusions of law.

The Staff supports Mr. Reed's request insofar as he requests free copying and service for the above delineated categories of documents. However, the Staff notes that intervention pleadings do not fall within the above categories.

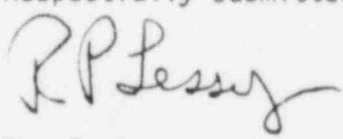
The Staff also wishes to point out that unless the presiding officer provides otherwise, 10 C.F.R. §2.712 requires that the documents to be copied and served by the NRC should be in the hands of the Docketing and Service Branch not less than five days before their due date.

III.

CONCLUSION

For the reasons stated above, the Staff believes that Mr. Reed should be admitted as a full party to this proceeding. The Staff also believes that Mr. Reed's alternate request that he be permitted to participate as a limited appearee also should be granted, if he so chooses. As to the contentions filed by Mr. Reed, the Staff believes that Mr. Reed's contentions numbers three and four should be admitted. The Staff also believes that if the Board admits Mr. Reed as a party to the proceeding point to 10 C.F.R. §2.714, that his request for free copying and service be granted with respect to discovery responses, testimony, and proposed findings.

Respectfully submitted,



Roy P. Lessy
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 10th day of November, 1980

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	
UNION ELECTRIC COMPANY	)	Docket Nos. STN 50-483
	)	STN 50-486
(Callaway Plant, Units 1 and 2)	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF RESPONSE TO: (1) "AMENDED PETITION FOR LEAVE TO INTERVENE AND REQUEST FOR A HEARING OF JOHN G. REED" AND (2) MR. REED'S "REQUEST FOR FREE COPY AND SERVICE" in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class, or, as indicated by an asterisk, through deposit in the Nuclear Regulatory Commission's internal mail system, this 10th day of November, 1980:

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