

January 28, 1981

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

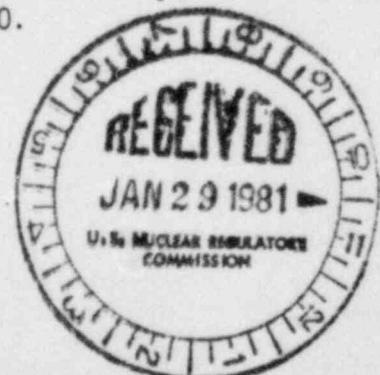
In the Matter of )  
UNION ELECTRIC COMPANY ) Docket Nos. STN 50-483  
(Callaway Plant, Units 1 and 2) ) STN 50-486

RESPONSE OF THE NRC STAFF TO: (i) PETITION TO INTERVENE  
FILED BY MS. J. BOTWINICK AND (ii) REQUEST FOR  
PARTICIPATION OF LOCAL GOVERNMENT  
REPRESENTATIVE ROBERT G. WRIGHT

I. BACKGROUND

On November 14, 1980, the Nuclear Regulatory Commission published in the Federal Register (45 Fed. Reg. 77208) a "Clarification Of Notice Of Receipt Of Application For Facility Operating Licenses: Consideration Of Issuance Of Facility Operating License and Notice Of Opportunity For Hearing." That notice provided, inter alia, that any person whose interest may be affected by Union Electric Company's ("UE") application for an operating license for Callaway Plant, Unit 1 could submit a petition for leave to intervene in accordance with 10 C.F.R. Part 2 of the Commission's Rules of Practice by December 22, 1980.<sup>1/</sup>

<sup>1/</sup> The Notice also provided that persons who previously filed a petition for leave to intervene or request for a hearing in response to the August 26, 1980 Federal Register notice (45 Fed. Reg. 56956) need not refile. As explained in the November 14 Notice, a clarifying notice was required to reflect UE's present intention to apply at this time for an operating license for Callaway Plant, Unit 1 only, in accordance with UE's letter to the NRC of October 1, 1980.



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On January 13, 1981, the Office of the Secretary of the Commission served upon the parties to this proceeding a petition to intervene and request for a hearing in letter form filed by Ms. Joan Botwinick of Chesterfield, Missouri. The petition was filed prior to December 22, 1980, the last date for the filing of timely petitions. For the reasons set forth below, the Staff believes that the petition as filed does not satisfy the requirements of 10 C.F.R. § 2.714, but that the petition should be denied without prejudice to its timely renewal and resubmission.

The Commission also received on January 22, 1981, a request for participation of a county governmental representative from Mr. R. G. Wright pursuant to 10 C.F.R. § 2.715(c). For the reasons set forth in Section IIB of this response, the Staff supports the petition of Mr. Wright subject to the proviso set forth therein.

## II. DISCUSSION

### A. Intervention Petition of J. Botwinick

Ms. Botwinick's petition states the petitioner's desire "to be an intervenor" in "the licensing process" for Callaway, Unit 1, "to petition against giving a license to operate the plant," and to request a hearing. The petition consists of one operative sentence, quoted immediately below:

Living downstream from the plant, being aware that there is already radioactive water being released into the water our family drinks, and realizing that no one has determined what "safe" levels of radioactivity are, I believe that allowing this additional emission into my drinking water could be injurious to the health of the St. Louis community and to my own family.

The Staff estimates that petitioner resides approximately 65-70 miles downstream from the proposed Callaway facility and that St. Louis is approximately an additional 20 miles from the facility.

The adequacy of the petition must be evaluated in light of the requirements for intervention established in 10 C.F.R. § 2.714 of the Commission's Rules of Practice. Thus, an adequate petition should set forth with particularity:

- (1) the interest of the petitioner in the proceeding,
- (2) how that interest may be affected by the proceeding, including the reasons why petitioner should be permitted to intervene, and
- (3) the specific aspect or aspects of the subject matter of the proceeding as to which petitioner seeks to intervene. 10 C.F.R. § 2.714(a)(2).

The regulation further provides that the presiding licensing board in ruling upon petitions to intervene shall consider: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interests in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest.<sup>2/</sup>

With regard to interest and standing to intervene as-of-right, the Commission has established that contemporaneous judicial concepts of standing are to be applied in determining whether a petitioner should be admitted as a

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<sup>2/</sup> 10 C.F.R. § 2.714(d)(1)-(3).

party to an NRC proceeding. Portland General Electric Company, et al. (Pebble Springs Nuclear Plant, Units 1 and 2), CLI-76-27, 4 NRC 610, 613-14 (1976); Public Service Company of Oklahoma, et al. (Black Fox Station, Units 1 and 2), ALAB-397, 5 NRC 1143, 1144-45 (1977). Consequently, a petitioner must show that the proposed action which is the subject of the proceeding could result in "injury in fact"<sup>3/</sup> to an interest which is "arguably within the zone of interests" protected by the Atomic Energy Act or the National Environmental Policy Act. Pebble Springs, supra, at 4 NRC 613-14.

A petitioner may satisfy these requirements by showing that he resides "within the geographical zone that might be affected by an accidental release of fission products," Louisiana Power and Light Company (Waterford Steam Electric Station, Unit 3), ALAB-125, 6 AEC 371, 372 at n. 6 (1973)<sup>4/</sup> or that his base of normal everyday activities is in the vicinity of the facility. Gulf States Utilities Company (River Bend Station, Units 1

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<sup>3/</sup> "Abstract concerns" or a "mere academic interest" in the matter which are not accompanied by some real impact on a petitioner will not confer standing. Transnuclear, Inc., et al. (Ten Applications for Low-Enriched Uranium Exports to Euration Member Nations), CLI-77-24, 6 NRC 525, 531 (1977); Portland General Electric Company (Pebble Springs Nuclear Plant, Units 1 and 2), CLI-76-27, 4 NRC 610, 613 (1976). Rather, the asserted harm must have some particular effect on a petitioner, Transnuclear, supra, and a petitioner must have some direct stake in the outcome of the proceeding. See Allied-General Nuclear Services, et al. (Barnwell Fuel Receiving and Storage Station), ALAB-328, 3 NRC 402, 422 (1976).

<sup>4/</sup> The Appeal Board has concluded that close geographical proximity of a member's residence to a facility is sufficient, standing alone, to satisfy the interest requirements of 10 C.F.R. § 2.714. Virginia Electric and Power Company (North Anna Nuclear Power Station, Units 1 and 2), ALAB-522, 9 NRC 54, 56 (1979).

and 2), ALAB-183, 7 AEC 222, 226 (1974).<sup>5/</sup> Similarly, the requisite interest can be established by showing that the petitioner resides in the vicinity of the facility for at least a part of the year. See, e.g., Northern States Power Company (Prairie Island Nuclear Generating Plant, Units 1 and 2), ALAB-102, 6 AEC 188, 189-90 (1973). While no specific distance from a nuclear power plant has evolved from Commission decisions to define the outer boundary of the "geographic zone of interest," the Appeal Board has found that a licensing board "cannot be tarred with the brush of irrationality" for presuming that someone who carries on everyday activities within 25 miles of the plant has an interest. Gulf States Utilities Company (River Bend Station, Units 1 and 2), ALAB-183, 7 AEC 222, 226 (1974). Further, the Appeal Board has indicated that 50 miles "is not so great as necessarily to have precluded a finding of standing based on residence." Tennessee Valley Authority (Watts Bar Nuclear Plant, Units 1 and 2), ALAB-413, 5 NRC 1418, 1422 n. 4 (1977).

As to the "interest" of petitioner in this matter, we are left with only the previously quoted sentence from the petition as an indication of whether the "interest" requirements of 10 C.F.R. § 2.714 have been satisfied. Thus, the question becomes whether a petitioner who lives approximately

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<sup>5/</sup> A petitioner who resides at an appreciable distance from a nuclear facility but who frequently engages in substantial business and related activities in the vicinity of the facility may establish the requisite interest and standing. See Portland General Electric Company, et al. (Trojan Nuclear Plant), Order Concerning Requests for Hearing and Intervention Petitions (unpublished), July 27, 1978 and Portland General Electric Company, et al. (Trojan Nuclear Plant), ALAB-496, 8 NRC 308 (1978).

65-70 miles downstream from the Callaway facility and whose source of drinking water is the Missouri River has the requisite "interest." In this proceeding, the Staff concluded that the petition of Kay Drey had established the requisite "interest" on the basis of a combination of assertions made in that petition. That combination of assertions, in the Staff's view, established a sufficient stake of petitioner Drey in the outcome of this proceeding to satisfy the interest requirements of 10 C.F.R. § 2.714 although the petitioner lived approximately 75 miles downstream from the facility.<sup>6/</sup> Not only was Mrs. Drey concerned with releases from the Callaway facility into the Missouri River, but it was alleged that the River was the sole supply of her drinking water. Mrs. Drey also asserted that in the past she has used the Missouri River for recreation within a few miles of the plant and plans to continue such use in the future.<sup>7/</sup>

The instant petition is devoid of such combined assertions. It merely rests upon the assertion that a petitioner, residing approximately 65 miles from the proposed facility could be injured by plant emissions into the Missouri River, which is petitioner's source of drinking water. Although petitioner has made a general statement relative to possible effects on drinking water, there are no specific statements of real injury, effect or harm to petitioner as a result of operation of Callaway Unit 1. Accordingly, the Staff believes the instant petition as filed does not satisfy the interest requirements of 10 C.F.R. § 2.714.<sup>8/</sup> The Staff recommends that the

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<sup>6/</sup> See "Response Of The NRC Staff To Joint Petition To Intervene Filed By Kay Drey," p. 8 (October 15, 1980).

<sup>7/</sup> With respect to such recreational use, the Appeal Board has stated: "It is not immediately obvious that such recreational activity in the general vicinity of the plant perforce would not be affected by the issuance of the sought license amendment." Virginia Electric and Power Company (North Anna Nuclear Power Station, Units 1 and 2), ALAB-522, 9 NRC 54, 57 (1979).

<sup>8/</sup> As to the "aspects" requirement of 10 C.F.R. § 2.714, the Staff believes it is reasonably clear that the petitioner is concerned with discharges from the plant into the Missouri River and the effect of such discharges on drinking water.

petition be denied without prejudice to its timely renewal, as determined by the presiding Licensing Board.<sup>9/</sup>

The Staff also recommends that an evaluation of the petition under the discretionary intervention criteria established in Portland General Electric Company (Pebble Springs Nuclear Plant, Units 1 and 2), CLI-76-27, 4 NRC 610 (1976) await the refiling of the petition, inasmuch as the petition, as filed, does not presently contain sufficient information to determine whether or not discretionary intervention should be granted.

B. Request For Participation of Local Government Representative  
Robert G. Wright

On January 16, 1981, Mr. Robert G. Wright filed a request to participate as a local government representative in this proceeding, pursuant to 10 C.F.R. § 2.715(c). Mr. Wright is an "Associate Judge" or "commissioner"<sup>10/</sup> in Callaway County, Missouri. Mr. Wright filed his request in response to the November 14, 1980 Federal Register notice, but states that he did not file his request on or before December 22, 1980, as called for in the Federal Register

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<sup>9/</sup> As to contentions, under present regulations, contentions of the petitioner need not be included in the petition (though they may be), but such contentions must be filed no later than fifteen days prior to the first or special prehearing conference considering intervention, 10 C.F.R. § 2.714(b). In an operating license proceeding the presiding licensing board should satisfy itself that at least "one good contention" has been filed, because in the absence of such a contention, a hearing is not mandatory. Cincinnati Gas & Electric Co. (William H. Zimmer Nuclear Power Station), ALAB-305, 3 NRC 8, 12 (1976).

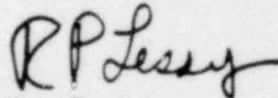
<sup>10/</sup> See "Response Of The NRC Staff To Petition To Intervene Filed By Missouri-Kansas Section: American Nuclear Society And To Requests For Participation Of Local Government Representatives . . .", p. 6 n. 7 (January 12, 1981).

notice, because he was not sworn in until December 31, 1980. Accordingly, the Staff believes Mr. Wright has established good cause for the lateness of his filing. Because Mr. Wright is not the presiding judge in Callaway County, the Staff agrees with the position of the Applicant<sup>11/</sup> regarding Mr. Wright's request, i.e., that there is no objection to Mr. Wright's request to participate, assuming Mr. Wright delineates the nature of his representative authority at or before the first prehearing conference.

### III. CONCLUSION

For the reasons discussed above, the Staff believes that the petition to intervene filed by Mrs. J. Botwinick should be denied without prejudice to its timely renewal, as determined by the presiding Licensing Board. The Staff recommends that petitioner be offered an opportunity to amend and refile the petition within twenty-one days after the Board has initially ruled upon the petition. In addition, for the reasons set forth above, the Staff recommends that the petition for participation of local government representative as filed by Mr. R. G. Wright be granted in accordance with 10 C.F.R. § 2.715(c), provided Mr. Wright subsequently delineates the precise nature of his representative capacity.<sup>12/</sup>

Respectfully submitted,



Roy P. Lessy  
Counsel for NRC Staff

Dated at Bethesda, Maryland,  
this 28th day of January, 1981.

<sup>11/</sup> "Applicant's Answer To the Request For Participation Of Local Government Representative Robert G. Wright At Hearings," p. 2 (January 21, 1981).

<sup>12/</sup> In the Staff's answer to the request of Mr. Samuel Birk to participate as a local government representative filed on January 12, 1981, Staff indicated it did not know what position Mr. Birk held. The Staff has subsequently learned that Mr. Birk is the Mayor of Morrison, Missouri. Accordingly, the Staff believes that Mr. Birk has satisfied the requirements of 10 C.F.R. § 2.715(c) and supports the request to participate.

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CERTIFICATE OF SERVICE

I hereby certify that copies of "RESPONSE OF THE NRC STAFF TO: (i) PETITION TO INTERVENE FILED BY MS. J. BOTWINICK AND (ii) REQUEST FOR PARTICIPATION OF LOCAL GOVERNMENT REPRESENTATIVE ROBERT G. WRIGHT" 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 by deposit in the Nuclear Regulatory Commission internal mail system, this 28th day of January, 1981:

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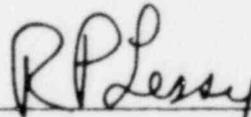
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