



UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

James P. Gleason, Chairman
Glenn O. Bright
Jerry R. Kline



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In the Matter of

UNION ELECTRIC COMPANY

(Callaway Plant, Unit 1)

Docket No. STN-50-483-OL

April 21, 1981

SPECIAL PREHEARING CONFERENCE ORDER
(Ruling on Intervention Petitions,
Requests for Hearing and Contentions)

By a Memorandum and Order of February 4, 1981, in this proceeding, we convened a special prehearing conference as required by 10 CFR 2.751(a). The conference, held in Jefferson City, Missouri, on March 24, dealt with petitions, proposed contentions and scheduling procedures. We discuss and dispose of those matters as follows:

PETITIONS

The Board has previously admitted as parties Mr. John G. Reed and the Copetitioners (hereafter referred to as Joint Intervenors), the Coalition for the Environment (St. Louis Region), Missourians for Safe Energy and the Crawdad Alliance. It had denied admission to Kay Drey as a fourth member. In an amended petition, Mrs. Drey renewed her request for intervention citing a "substantial knowledge and a substantial library of information"

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respecting the two contentions submitted by the Joint Intervenors. In addition, she cited a viable interest in the proceeding with the possibility of damage to her health and her family with the release of radioactive pollutants to contaminate their air, drinking water and food supplies. The petitioner's residence is seventy-five (75) miles from the plant. She also alleges an occasional use for recreational purposes in areas within 10 to 60 miles of the site. Although insisting on her right to intervene, the petitioner requests as an alternative, participation through an exercise of the Board's discretion based on her ability to make a substantial contribution to the development of a sound record.

There can be no question of Mrs. Drey's interest and concern in matters involving nuclear energy. She has participated in numerous governmental proceedings and activities dealing with nuclear power and its waste products and her apprehension regarding the licensing of the Callaway plant appears both substantial and genuine. However, personal involvement and concern cannot substitute for meeting the standing requirements for intervention in NRC proceedings. As expressed in many Licensing and Appeal Board decisions, an intervenor's interest must be both personal and real.^{1/} One of the bases for standing requirements is the functional necessity for definite and pointed interests that will support an adversary process in an adjudicatory proceeding. Frequently, this necessity is stated in terms that an intervenor

^{1/} Nuclear Engineering Company (Sheffield Low-Level Radioactive Waste Disposal Site), ALAB-473, 7 NRC 737, 743 (1978); Detroit Edison Company (Enrico Ferri Atomic Power Plant, Unit 2), 7 NRC 382, 387 (1978).

must successfully meet an "injury in fact" test by an allegation of some injury, personal in its effect, that has or will likely occur from the acts complained of.^{2/} Where, however, the harm complained of is, as here, a generalized grievance shared in substantially equal measure by all or a large class of citizens, intervention will not be granted as a matter of right.^{3/} The petitioner's claim here is no different than that which could be asserted by thousands of other residents of the State of Missouri similarly situated and accordingly, her request for admission must be denied. Her residence is within 75 miles distance of the plant and the occasional recreational trips within shorter distances to the site, which she and her family make do not present in the Board's judgment adequate circumstances to justify approval of her request for intervention. Although proximity to a proposed nuclear facility has been held to constitute a valid basis for intervention, previous NRC cases and rulings have not extended this boundary beyond a 50-mile radius and this Board is not moved to do so either. And while recreational activities in or near areas of such facilities have similarly been viewed as constituting a valid interest to intervenors for participation as a matter of right, where the involvement is intermittent or irregular, the potential harm becomes too speculative and remote.

Referring now to the question of permitting Mrs. Drey's participation by exercising the discretionary authority of the Board, we must be guided

^{2/} Portland General Electric Company (Pebble Springs Nuclear Plant, Units 1 and 2), CLI-76-27, 4 NRC 610, 613 (1976).

^{3/} Transnuclear Inc., CLI-77-24, 6 NRC 525, 531 (1977); Warth v. Seldin, 422 US 490, 499 (1975).

here by the factors set forth in 10 CFR 2.714 and the Commission's rulings. (Portland General Electric Co., et al., Id. at 615-616.) Although a number of positive and negative factors are looked at in reviewing the circumstances for exercise of a Board's discretionary powers, the most prominent of these relate to the extent to which the petitioner can make a substantial contribution to the development of a sound record. In this proceeding, Mrs. Drey's contentions are the same as those of her copetitioners. They are all represented by the same counsel and there is no reason to suspect that the issues to be litigated will not receive the same focus of illumination without her participation as they would with it. If Mrs. Drey has a contribution to make on the alleged failures in the applicant's quality assurance program, there would seem to be no reason that her testimony could not be made available as a witness for one of the admitted intervenors. (Virginia Electric and Power Company [North Anna Nuclear Power Station, Units 1 and 2], 9 NRC 402, 405 [1979].) Accordingly, the absence of cognizable interests in this proceeding and the availability of other parties to raise the identical issues proposed by this petitioner outweigh any case that can be made for her participation. Even though neither the applicant nor the Staff objects, the Board does not believe that is a proper case for the exercise of its discretionary authority.

By our previous Order, requests for intervention as interested government officials was approved and are hereby confirmed for the Public Service Commission of the State of Missouri, Howard Steffen, Harold Lottman, Earl Brown, Fred Lukey, Samuel J. Birk, James C. Crowe, and Robert G. Wright,

subject to our receiving the authorizations requested from the named local officials during our special prehearing conference. Requests for limited appearances are also approved for Marjorie Reilly, a representative of the League of Women Voters of Missouri and the Missouri-Kansas Section of the American Nuclear Society.

CONTENTIONS

To approve petitions for intervention, the Board has found that the several contentions submitted by the petitioners were acceptable in meeting the requirements of 10 CFR 2.714(b) as to specificity and bases. In discussions of this matter at the special prehearing conference, the contentions of Mr. Reed were revised and reduced in number from four to three and the contentions of the Joint Intervenors were revised.

Reed Contention 1

This contention puts into issue the failure of the applicant to meet the emergency planning requirements of 10 CFR 50.47. In reply to the Staff's request for further specificity, Mr. Reed has referenced, in some detail, the failure or lack of activity in meeting the standards set forth in 10 CFR 50.47(b). The applicant concedes that the emergency plan required has not been prepared to date and suggested that the contention be admitted for discovery purposes with additional specifics to be required in its behalf after the plan has been made available. We agree that at this stage of the proceeding, the contention is reasonably specific. We also agree with the applicant

and presumably the Staff that further particularization of this contention should be made by Mr. Reed within a fifteen (15) day period after the emergency response plan is prepared and made available.

Reed Contention 2

Mr. Reed, after conferring with the applicant and Staff, has dropped his original contention which was listed as Contention numbered 2 and substituted in its place his Contention numbered 4. This contention addresses the issue of funding or the lack thereof for local emergency response plans. It reflects an allegation that this consideration has not received adequate attention and that as a consequence, public health and safety will be adversely affected. The contention refers to NRC and FEMA publications and is not opposed by either the applicant or Staff. The contention will be admitted.

Reed Contention 3

During the special prehearing conference, this contention was changed by Mr. Reed, after a conference with the applicant and Staff, to read as follows:

There has not been an adequate definition of the allocation of responsibilities for offsite emergency planning between state and local organizations, as provided in NUREG-0654.

The issue raised by this contention is the failure of the applicant to recognize the responsibilities of local government in the event of radiological emergencies and reference is made to the criteria in NUREG-0654, as well as the applicant's Final Safety Analysis Report in the contention as it

was originally phrased. Neither the Staff nor the applicant object to the contention's admission and it is so ordered. We require that this contention be made more specific within fifteen (15) days after the applicant's amended response plan is made available.

Joint Intervenors' Contention 1

During the special prehearing conference, this contention was revised. Listed under the general heading of Failure of the Quality Assurance Program, we summarize here for identification purposes the specific issues proposed for litigation. Neither the applicant nor the Staff has objected to these contentions except for a complaint that the failures listed are not intended to exhaust the deficient activities that the Joint Intervenors seek to place in litigation. On this point, we must conclude that 10 CFR 2.714(b) requires that petitioner's contentions must be specified at the time of the special prehearing conference. This requirement is necessary so that controversies within the jurisdiction of the Board are framed and also to provide the applicant and other parties with knowledge of the issues they will face in the proceeding. If additional contentions are to be proposed in the future, they will have to receive the Board's approval at that time.

Joint Intervenors' Contention 1A

This contention states that inadequate and incomplete inspection and testing on embedded plates were performed during the plant's construction. The contention is admitted.

Joint Intervenors' Contention 1B

This contention states that several cracks in concrete structures at the site which affect the plant's safe operation were not inspected and were accepted. The contention is admitted.

Joint Intervenors' Contention 1C

This contention states that a number of instances of honeycombing (air pockets or voids) occurred during construction in the reactor building base mat of the reactor building dome. The contention is admitted.

Joint Intervenors' Contention 1D

This contention states that a concrete coverage of reinforcing bars in concrete walls and floors in many areas of the plant does not meet NRC requirements. This contention is accepted.

Joint Intervenors' Contention 1E

This contention states that safety-related piping not in conformity to ASME Codes was utilized in the plant. The contention is accepted.

Joint Intervenors' Contention 1F

This contention states that improper inspection techniques and defective welds were used in pre-assembly piping formations. The contention is accepted.

All of these contentions relate allegedly to a failure in the quality assurance program.

Joint Intervenors' Contention 2

The Joint Intervenors filed a revised version of this contention during the prehearing conference. During the conference, the applicant objected to the use by the petitioners of compliance with Environmental Protection Agency (EPA) regulations in 40 CFR Part 190 as a foundation for these contentions listed under the general heading "Inadequate Environmental Protection From Radioactive Releases." Subsequently, as acknowledged by the applicant, the Commission has adopted amendments to 10 CFR Part 20 which require compliance with 40 CFR Part 40.

Joint Intervenors' Contention 2A

This contention states that the applicant has not adequately assessed and cannot accurately predict the amount or discharge rate of the radioactive pollutants to be released from Callaway Plant, Unit 1, into the Missouri River, or the amount of dilution to be afforded by the river, which provides drinking water for downstream communities including the City of St. Charles and St. Louis City and County.

Anticipated water diversion projects in the Missouri River watershed and conditions of drought and freezing (ice-jams) would lower the amount of dilution water available and this could raise the concentration of radioactive material in the river to higher levels than calculated by U.E. Because

the applicant cannot accurately predict radioactive releases, it cannot accurately predict the potential bioconcentration of radionuclides in fish.

Contention 2A has sufficient specificity and basis for admission in this proceeding. Neither applicant nor Staff object to its admission. Contention 2A is admitted.

Joint Intervenor's Contention 2B

This contention states that the applicant completely ignores the potential impact of its radioactive releases on drinking water. The applicant's analysis of the liquid pathway dosage includes only fish caught within .05 miles downstream from the discharge pipe and shoreline recreation activities. (See FSAR Site Addendum, Table 11.2-4.)

Contention 2B has sufficient specificity and basis for admission. Neither applicant nor Staff object to its admission. Contention 2B is admitted.

Joint Intervenor's Contention 2C

This contention states that adsorption and absorption of some radionuclides in sediment and the potential resuspension of these materials in the event of dredging or flooding could lead to high levels of contamination.

Contention 2C has sufficient specificity and basis for admission. Neither applicant nor Staff object to its admission. Contention 2C is admitted.

Joint Intervenors' Contention 2D

This contention states that the applicant has not adequately assessed and cannot accurately predict the amount or discharge rate of the radioactive pollutants to be released from Callaway Plant, Unit 1, into the atmosphere. Furthermore, due to meteorological considerations, U.E. is unable to predict accurately the dispersion of radioactive materials or their fallout rate.

The contention as stated puts the applicant adequately on notice as to the subjects it would be called upon to defend and it is therefore sufficiently specific for admission. It is somewhat deficient, however, in that it supplies neither reasons nor references as to why applicant's predictions are inaccurate. It refers only vaguely to "meteorological considerations" as a basis for alleging that the applicant is unable to predict dispersion or fallout of radioactive materials. It is possible that Joint Intervenors could cure this defect in an otherwise acceptable contention through supplementation. The Board will therefor admit Contention 2D for discovery subject to the provision that Joint Intervenors supply supplementary information which addresses the basis of the contention.

Joint Intervenors' Contention 2E

This contention states that there will be inadequate monitoring of the release of tritium, noble gases, alpha, beta and gamma emitters when in quantities below the level of detection of commercial monitoring equipment or during accidental releases.

Contention 2E has sufficiently specificity and basis for admission. Neither applicant nor Staff object to its admission. Contention 2E is admitted.

Joint Intervenors' Contention 2F

This contention states that planned releases of radioactive materials from three nuclear reactors upwind and upstream from the Callaway Plant on the Missouri River may also impact upon the local residents. Residents of Metropolitan St. Louis may also be affected by gaseous emissions from a uranium fuel fabrication plant in Hematite, Missouri, 32 miles south of St. Louis.

Contention 2F is lacking in specificity and its basis is unstated. Furthermore, it refers to three nuclear stations^{4/} and a uranium fuel fabrication plant whose radioactive emissions are themselves subject to direct

^{4/} At the prehearing conference the applicant identified the three nuclear stations as Fort Calhoun, Cooper and Fort St. Vrain (Tr. 61); however, Joint Intervenors did not specify the distance of these facilities from the Callaway station or any other particulars as to why these stations are of concern.

regulation by the NRC. The Staff position is that a contention relating to the regulation of other nuclear facilities not owned by the applicant is irrelevant to this proceeding (Tr. 67). The applicant read this contention as an attempt to challenge compliance with the EPA standard (40 CFR 190) but argued at the prehearing conference that this is impermissible since Appendix I to 10 CFR 50 contains the NRC rules promulgated to implement the EPA standard (Tr. 59-62).

The applicant amended its response to Contention 2F on April 7, 1981, by pointing out that the NRC had published an amendment to 10 CFR 20 on March 25, 1981 (46 Fed. Reg. 18525, March 25, 1981), which requires licensees to comply with 40 CFR 190. The applicant then withdrew its objection to the Joint Intervenors' reliance on the EPA standard as a basis for this contention but continued to oppose the contention's admission on the grounds of alleged failure to show an adequate basis as required by 10 CFR 2.714(b).

Joint Intervenors confirmed their concern was that the cumulative radiation levels from the planned releases from Callaway and the four named nuclear facilities must be found to be in compliance with 40 CFR 190 in the vicinity to Callaway (Tr. 67).

The Board has reviewed the amendments to 10 CFR 20 and finds that Callaway must meet the requirements of 10 CFR 20 as amended prior to licensing and notes further that the amended regulation is equally applicable to the other facilities referenced in Contention 2F. Thus the Staff's position

taken at the prehearing conference remains valid in that a contention citing the effects of emissions from other nuclear facilities not owned by the applicant is irrelevant to this proceeding. Callaway has an independent obligation to meet the additional requirements of Part 20 prior to licensing without reference to other facilities.

For the foregoing reasons, Contention 2F is denied. Challenges to Callaway's compliance with 10 CFR 20 as amended would now be relevant and permissible in this proceeding provided that a properly framed contention were filed in a timely manner. In this case any contentions so filed would now be late and would ordinarily have to meet the requirements of 10 CFR 2.714(a)(1) before the Board could accept it. However, the Board recognizes that the amended regulations were published on March 25, 1981, one day after the prehearing conference was held. Opportunity to revise Contention 2F prior to the prehearing conference therefore did not exist. In view of this development, the Board finds good cause to permit Joint Intervenors added time to revise Contention 2F if they wish to do so. This opportunity is granted for the narrow purpose stated and is not to be taken as an opportunity to frame new contentions on other subjects. Any revision to Contention 2F must be in the hands of the Board and the parties not later than fifteen (15) days from the date of this Order. The parties will have ten (10) days to reply and the Board will rule on admissibility promptly.

Joint Intervenor's Contention 2G

This contention states that U.E.'s estimates of annual emissions do not take into account releases from the spent fuel pool, increased releases as the plant gets older and leakier (e.g., from steam generator tube deterioration) and releases from decontamination procedures.

Contention 2G has sufficient specificity and basis to be admitted to this proceeding. Neither applicant nor Staff object to its admission. Contention 2G is admitted.

Joint Intervenor's Contention 2H

This contention states that in addition, U.E. does not admit to the potential releases of some of the major fission products, e.g., cerium-144 and technetium-99, and some of the major activation and corrosion products, such as neptunium-239 and nickel-63.

Contention 2H lacks specificity in failing to cite effluent pathways or other specific aspects of fission product, activation product or corrosion product release which are of concern to Joint Intervenor's.

The defect could ordinarily be cured by amendment. However, if this were done here, the contention would be duplicative of contentions already admitted in this proceeding. Contention 2A cites specific concern for radioactive pollutants which may be released to the Missouri River and Contention

2D cites specific concern for radioactive pollutants which may be released to the atmosphere. The term "radioactive pollutants" as used in previously admitted contentions includes those radionuclides named in this contention. We conclude therefore that the concerns expressed in this contention are encompassed by other contentions already admitted. Contention 2H is denied on the grounds that it is duplicative of others already admitted to this proceeding.

Joint Intervenors' Contention 2I

U.E.'s estimates of radiation dose from the Callaway Plant emissions do not adequately reflect new data on the health effects of low-level radiation, and of tritium in particular.

Contention 2I lacks specificity in that it fails to identify the sources of new data on health effects of low-level radiation and of tritium and gives no hint as to the significance of the alleged new data. The Board agrees with the applicant that this contention appears to be an attempt to litigate health effects of radioactive emissions from plants operating in compliance with Appendix I. This litigation is permissible; however, the Boards have been advised by the Commission to take official notice of the facts contained in the record of the Appendix I rulemaking in such cases.

Given the existence of such a record, the unsupported allegation of new data on health effects of low-level radiation is insufficient. Contention

2! is therefore denied. If Joint Intervenors specifically identify new data on health effects of low-level radiation prior to the next prehearing conference, the Board would consider a request at that time to amend Contention 2 to take account of such data.

SCHEDULE

The applicant has proposed, and no objection being raised we concur with it, that a trifurcated hearing schedule be established to accommodate the issues to be adjudicated. It is estimated by the applicant that the estimate for loading fuel at the completed plant is October 1982. This assumes naturally the issuance of an operating license. The Staff judges that on the basis of an accelerated schedule, both the Safety Evaluation Report and Final Environmental Statement could be available in the last quarter of 1981. It has also been suggested, as a convenience, that the hearings be held in St. Louis and in Callaway County to aid the particular party intervenors. Based on the foregoing, we establish the following schedule.

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| 1. Discovery comments. | Issuance of this Order. |
| 2. Last day for filing of first-round discovery requests. | May 26, 1981. |
| 3. Last day for filing responses to first-round discovery requests. | July 10, 1981. |
| 4. Last day for filing of second-round discovery requests. | August 10, 1981. |
| 5. Last day for filing responses to second-round discovery requests. | September 10, 1981. |

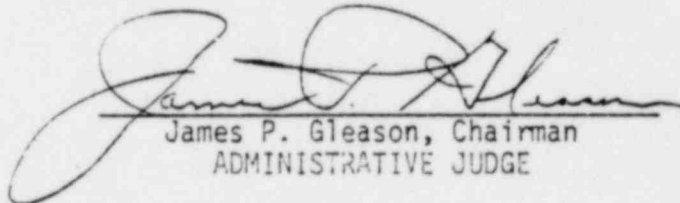
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| 6. Filing of direct, written testimony on Joint Intervenor's construction defects contentions. | October 1, 1981. |
| 7. Prehearing Conference under 10 CFR 2.752. | October 15, 1981. |
| 8. Hearing commences on construction defects contentions. | November 4, 1981. |
| 9. Filing of direct, written testimony on environmental contentions. | Thirty (30) days prior to hearing on environmental contentions. |
| 10. Prehearing conference on environmental contentions. | Fifteen (15) days prior to hearing on environmental contentions. |
| 11. Hearing in St. Louis on environmental contentions. | Date to be announced through subsequent Order. Approximately forty-five (45) days after issuance of Staff's FES and SER. |
| 12. Filing of direct, written testimony on emergency planning. | Thirty (30) days prior to hearing on emergency planning contentions. |
| 13. Hearing in Callaway County on emergency planning contentions. | Date to be announced through subsequent Order. Approximately sixty (60) days after issuance of FES and SER. |

Additional discovery requests to those permitted by the above schedule can only be filed with the Board's permission and must be based on information that could not, with diligence, be known at the time authorized for discovery. Such requests must be filed within thirty (30) days after it became or should have become known. Any objections to interrogatories or the production of documents, inspections, etc., under 10 CFR 2.741 shall be served within fourteen (14) or thirty (30) days, respectively. The site for the hearings above will be designated by a future Order.

Inasmuch as petitions to intervene and requests for a hearing have been received and approved by the Board and contentions for litigation have been accepted, a hearing has been approved and a Notice of Hearing, in the form of the attachment hereto, is being issued today. This Order shall be considered final for appeal purposes as of the date of its issuance and is subject to appeal to the Atomic Safety and Licensing Appeal Board under the terms of 10 CFR 2.714(a). Any such appeal must be filed within ten (10) days after service of this Order and can be commenced by the filing of a notice of appeal and accompanying supporting brief.

IT IS SO ORDERED.

FOR THE ATOMIC SAFETY AND LICENSING
BOARD



James P. Gleason, Chairman
ADMINISTRATIVE JUDGE

Dated April 21, 1981,
at Bethesda, Maryland.