

August 13, 1982

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

In the Matter of)
)
UNION ELECTRIC COMPANY) Docket No. STN 50-483 OL
)
(Callaway Plant, Unit 1))

APPLICANT'S MOTION TO AMEND THE SCHEDULE

In a Memorandum and Hearing Schedule Order served on August 9, 1982, the Atomic Safety and Licensing Board established a new schedule on the emergency planning contentions in this proceeding, up to and including the filing of direct, written testimony on October 12, 1982. Applicant Union Electric Company hereby moves the Board to issue an order amending the schedule so that a meaningful opportunity is provided for the parties to pursue the summary disposition process provided for in 10 C.F.R. § 2.749.

The Board's previous Memorandum and Hearing Schedule Order of June 9, 1982, had set forth the schedule agreed to at that time by the parties and the Board. The major disruption to the proceeding which has occurred since then is the filing by intervenor Reed of a large number of contentions, touching upon nearly every conceivable off-site emergency planning issue, and the unanticipated need: (1) for the other parties to file lengthy objections to the admission of the proposed contentions and, (2) for the Board to hold a prehearing conference on September 2 and 3, 1982, to hear further argument on which issues will be admitted.

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Applicant did not foresee a major and extended controversy, which is still in progress, over the scope and definition of the issues to be tried in this case. The number and nature of Mr. Reed's proposed contentions now require, however, that the disputes over the admissibility of contentions be resolved by the Licensing Board on a schedule which provides the parties with a reasonable opportunity to prepare for trial and to employ the summary disposition process if it is warranted.

In its Statement of Policy on Conduct of Licensing Proceedings, CLI-81-8, 13 N.R.C. 452 (1981), the Commission stated that

In exercising its authority to regulate the course of a hearing, the boards should encourage the parties to invoke the summary disposition procedure on issues where there is no genuine issue of material fact so that evidentiary hearing time is not unnecessarily devoted to such issues.

13 N.R.C. at 457.

While Applicant recognizes and shares the Board's interest in proceeding to resolve on a timely basis this phase of the Callaway Plant operating license proceeding, the schedule recently established by the Board would effectively deny Applicant a reasonable opportunity to pursue summary disposition. Assuming that the Board does not rule from the bench at the September 2-3, 1982 prehearing conference,^{1/} and recognizing the Labor Day holiday, September 7 is the earliest date by which the Board could communicate its rulings identifying the matters placed in controversy. Any motions for summary disposition, with the requisite supporting affidavits, are now due on September 10.

^{1/} Board rulings during the conference would not, in any event, cure Applicant's effective inability to pursue summary disposition on the current schedule.

Given such a short time period between the admission of the contentions and the filing of motions for summary disposition, it would be essential for any proponent of a motion to prepare its legal brief and supporting affidavits prior to the Board's ruling admitting and/or rejecting Mr. Reed's proposed contentions. There are two reasons why such a contingency preparation effort is infeasible for Applicant in the case of the off-site emergency planning contentions. First, Mr. Reed has proposed in excess of 100 (albeit somewhat overlapping) listed allegations in his proposed contentions, the vast majority of which have been objected to by Applicant and/or the NRC Staff. This volume of potential issues makes contingency preparation of summary disposition affidavits and draft testimony extremely burdensome and creates the strong possibility of a substantial wasted effort. Second, and even more important, is the fact that, as to off-site emergency planning, affidavits in support of any summary disposition motions by Applicant would have to come from state and county officials responsible for the planning. These personnel and their agencies are not parties to this case and are not under Applicant's control. While we are seeking their voluntary cooperation with this NRC proceeding, it is unreasonable to expect state and county officials, who do not normally receive staff support for complex hearing preparation, to undertake to prepare affidavits on issues which the Board may well not admit into controversy. Consequently, Applicant

would be foreclosed from seeking summary disposition under the current schedule.

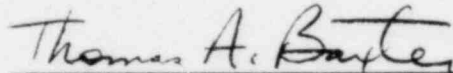
Approximately the same considerations apply to the few days, contemplated by the current schedule, between the Board's ruling on summary disposition motions and the filing of direct, written testimony. In order to meet the Board's schedule, contingency testimony would have to be prepared on all of the admitted contentions, even though the potential exists that the Board will decide many of them under the summary disposition process. Again, if it were simply up to Applicant to marshal the necessary resources to advance its own interest in an expedited proceeding by preparing testimony on a contingency basis, the current schedule might be accomplished. Where the testimony required addresses off-site emergency planning, however, the preparation for hearing is not within Applicant's control and must rely upon the cooperation of state and local officials. Again, Applicant believes that it is unreasonable to ask these officials to prepare testimony on a contingency basis when the Board might dispose of many admitted contentions on a summary basis.

For all of the foregoing reasons, Applicant moves that the Licensing Board add 3 to 4 weeks to the current schedule for filing motions for summary disposition, and another 3 to 4 weeks to the schedule for filing direct, written testimony. As amended, the current schedule would be as follows, consistent with the Board's intent to issue prompt rulings:

August 23, 1982	Last day for filing responses to discovery requests.
September 2-3, 1982	Prehearing conference to consider matters under 10 CFR 2.752.
October 8, 1982	Last day for filing summary disposition motions. Service shall be by express mail.
October 28, 1982	Last day for filing responses to summary disposition motions. Service shall be by express mail.
November 30, 1982	Last day for filing of direct, written testimony and qualifications of expert witnesses. Service shall be by express mail.

Respectfully submitted,

SHAW, PITTMAN, POTTS & TROWBRIDGE



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Dated: August 13, 1982

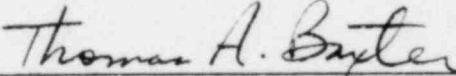
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CERTIFICATE OF SERVICE

I hereby certify that copies of "Applicant's Motion to Amend the Schedule" were served this 13th day of August, 1982, by hand delivery upon the parties identified by an asterisk and by deposit in the U.S. mail, first class, postage prepaid, to the other parties on the attached Service List.



Thomas A. Baxter, P.C.

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