August 25, 1982

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

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

APPLICANT'S ANSWER TO MR. REED'S MOTION FOR RELIEF FROM EXCESSIVELY BURDENSOME AND REDUNDANT DISCOVERY BY APPLICANT

Pursuant to the modified discovery schedule established by the Licensing Board, to which the parties, including intervenor John G. Reed, agreed, Applicant filed interrogatories and requests for the production of documents on Mr. Reed on July 15, 1982. See Board Memorandum and Hearing Schedule Order of August 9, 1982. The last day for filing answers to Applicant's discovery request was August 23, 1982, as established by the Board in its schedule. On August 23, Applicant received Mr. Reed's Motion for Relief from Excessively Burdensome and Redundant Discovery by Applicant, which was served on Saturday, August 21. It is this motion to which Applicant is now responding. In Applicant's view, Mr. Reed's request is without any merit whatsoever, is untimely and should be rejected.

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Applicant has been trying for well over a year to determine precisely what Mr. Reed's particular concerns are concerning offsite emergency planning at the Callaway Plant, and the basis for these concerns. Applicant will not now rehearse this long and unsuccessful effort, which is described in some detail in Applicant's Motion, and Answer to Reed Motion, to Establish Schedule for Conduct of Hearing on Emergency Planning Issues,' dated May 21, 1982; however, the following facts are indisputable.

Mr. Reed has had available to him for more than ten months onsite and offsite emergency plans for the Callaway Plant which, although evolving, nevertheless set forth the basic Callaway Plant offsite emergency plan. Detailed implementing procedures for each of the counties in the plume exposure pathway emergency planning zone, as well as the State plan, also have been provided to Mr. Reed. Despite the availability of these documents, Mr. Reed has resolutely refused to specify his concerns, either in the form of contentions or in answers to Applicant's interrogatories. As Applicant stated in its July 14, 1982, Response to Final Particularization of Reed's Contentions 1, 2 and 3, Mr. Reed's contentions for the most part constitute, at best, enumerations of and elaborations on the list of emergency planning standards set forth in 10 C.F.R. § 50.47. Many of his contentions simply restate in the negative the criteria of

NUREG-0654 without any asserted basis to support them. As a result, Applicant has been forced to use the interrogatory process to partially compensate for the lack of basis or specificity contained in Mr. Reed's numerous (over 100) contentions. Moreover, Mr. Reed's stalling tactics and failure to delineate his concerns have prevented Applicant from even beginning to prepare for litigation on the adequacy of off-site planning at the Callaway Plant. Cf. Applicant's Motion to Amend the Schedule, August 13, 1982, at 3.

Insofar as Mr. Reed was in any way burdened by Applicant's interrogatories, it was Applicant's understanding that this burden was alleviated by the additional week of time provided to Mr. Reed to answer them, as discussed during the August 2, 1982, conference call among the parties and the Board Chairman and as reflected in the Licensing Board's August 6, 1982 Memorandum and Hearing Schedule Order. Mr. Reed suggests in his Motion for Relief that Applicant has, in effect, had its interrogatories answered by being allowed to participate in the NRC Staff's deposition of Mr. Reed, and that to provide to Applicant "defacto double discovery" constitutes "procedural overload." Applicant disagrees with both of these propositions.

In the first place, Applicant is entitled by the general Rules of Practice to cross-examine a deponent during the course of another party's deposition. 10 C.F.R. § 2.740a(d). While the Staff struck an agreement with Mr. Reed that its deposition would substitute for the Staff's interrogatories,

Applicant was not made aware of this agreement until sometime during the deposition, when Applicant was asked by Mr. Reed whether we would agree to the same substitution. Applicant did not agree. In Applicant's view, Mr. Reed's general philosophy about emergency planning, which is reflected in the deposition, is not a substitute for specific answers, with supporting references to regulatory or other criteria and to specific facts and documentation which establish the basis for each alleged inadequacy. Thus, for example, while the deposition made clear that Mr. Reed foresees the need for various kinds of communications and radiological protection equipment, Applicant does not know why Mr. Reed believes these requirements are necessary. Furthermore, the deposition process, while useful, does not provide a disciplined means for precisely defining the scope or the complete particulars of Mr. Reed's contentions. In the subject area of offsite emergency planning, it is these specifics which must be identified before it is possible to determine the nature of the controversy, or even if a controversy exists. Applicant thus does not believe that the deposition process is an adequate substitute for written answers to interrogatories.

In addition, while it is indeed likely that Mr. Reed's deposition answers portions of various interrogatories proffered by Applicant, there is no way for Applicant to establish which interrogatories have been answered, other than comparing

each interrogatory with Mr. Reed's fairly lengthy deposition. At that juncture, unanswered questions would still remain. In Applicant's view, this would be an unjustifiable burden on Applicant,*/ which leads us to the fundamental issue raised by Mr. Reed's Motion for Relief, namely, Mr. Reed's obligation to respond in a timely fashion to interrogatories properly served on him.

The law establishes Applicant's clear entitlement to answers from Mr. Reed to its interrogatories. "[T]he courts have long recognized that parties are entitled to discover all matters not privileged that tend to support or negate the allegations in the pleadings, or which are reasonably calculated to reveal such matters." Pennsylvania Power & Light Company and Allegheny Electric Cooperative, Inc. (Susquehanna Steam Electric Station, Units 1 and 2), ALAB-613, 12 N.R.C. 317, 331 (1980) (footnote, with supporting citations, omitted). Applicant's interrogatories are patterned exclusively on Mr. Reed's voluminous contentions (or sub-contentions). Mr. Reed heartily complains about the number of interrogatories filed by Applicant. The simple fact is that the only reason there are as many interrogatories as there are is because of the number of contentions filed by Mr. Reed, particularly since those contentions generally lack a supportive basis and

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*/ It is well established that "the interrogating party should not need to sift through documents or other materials to obtain a complete answer." Commonwealth Edison Company (Byron Nuclear Power Station, Units 1 and 2), ALAB-678, 15 N.R.C. _____, slip op. at 43, n.39 (June 17, 1982), citing 4A Moore's Federal Practice ¶ 33.25(1) at 33-129-130 (2d ed. 1981).

are not specific. As the Appeal Board indicated in the Susquehanna decision, it is against the number and nature of the issues raised by the intervenor that the reasonableness of Applicant's discovery requests must be balanced. ALAB-613, 12 N.R.C. at 331-32. Utilizing this test, it is clear that Applicant's interrogatories are not burdensome.

As a general proposition, pretrial discovery in modern administrative practice is liberally granted to enable the parties to understand the facts, refine the issues, prepare adequately for trial and avoid the element of surprise. Id. at 321-22, citing Hickman v. Taylor, 329 U.S. 495 (1947), United States v. Proctor and Gamble Company, 356 U.S. 677 (1958), Miner v. Atlas, 363 U.S. 641 (1960), and Pacific Gas and Electric Company (Stanislaus Project), LBP-78-20, 7 N.R.C. 1038, 1040 (1978). In this instance, where the pleadings frequently do not describe in any, much less voluminous detail, "everything the parties expect to prove and how they plan to go about doing so," (see ALAB-613, 12 N.R.C. at 334) Applicant's interrogatories are a necessary and appropriate discovery device to determine the issues in controversy. As in the Susquehanna case, contrary to the assertion of the intervenor, Applicant's interrogatories reflect the number and complexity of the issues raised and are not simply a means of harrassment. Id. at 335. The Appeal Board's recent reiteration of the need for such interrogation is relevant here:

> The Applicants in particular carry an unrelieved burden of proof in Commission proceedings. Unless they can effectively inquire into the positions of the intervenors, discharging that burden may be impossible. To permit a party to make skeletal contentions, keep the bases for them secret, then require its adversaries to meet any conceivable thrust at hearing would be patently unfair, and inconsistent with a sound record [footnote omitted].

Commonwealth Edison Company (Byron Nuclear Power Station, Units 1 and 2), ALAB-678, 15 N.R.C. ____, slip op. at 35 (June 17, 1982), citing Northern States Power Co. (Tyrone Energy Park, Unit 1), LBP-77-37, 5 N.R.C. 1298, 1300-01 (1977), quoted with approval in ALAB-613, 12 N.R.C. at 338.

Two additional legal principles are responsive to Mr. Reed's Motion for Relief. First, "[i]t is not proper for a party to ignore a discovery request. Interrogatories, for example, must either be answered or objected to in the time allowed." ALAB-613, 12 N.R.C. at 322. For Mr. Reed to wait until the Saturday before the Monday, August 23, filing deadline to file his opposition to Applicant's interrogatories, particularly after having been given additional time to respond to them, is untimely to say the least and certainly does not constitute "good cause" for the Board tc grant Mr. Reed's request that his obligation to respond to the interrogatories be eliminated. See 10 C.F.R. § 2.740(c).

Second, Mr. Reed does no more in his Motion for Relief than restate his now stale argument concerning the evolving

nature of the offsite plan and procedures, and assert generally that he is being unfairly burdened. A similar blanket refusal to answer was rejected in the Susquehanna case:

> "If the interrogatories are relevant, the fact that they involve work, research and expense is not sufficient to render them objectionable [where] much of the information is in the possession or knowledge of the [parties to whom they are directed] and must be compiled in their own preparation for trial." United States v. NYSCO Laboratories, Inc., 26 FRD 159, 161-62 (E.D.N.Y. 1960). "First, the mere fact that interrogatories are lengthy, or that the [party] will be put to some trouble and expense in preparing the requested answers is not alone sufficient to warrant the granting of a protective order. Secondly, the [party] has not made specific objections to particular interrogatories; a general request for a protective order is not sufficient." Flood v. Margis, 64 FRD 59, 61 (E.D. Wis. 1974) (citations omitted); accord Flour Mills of America v. Pace, 75 FRD 676 (E.D. Okla. 1977); Kainz v. Anheuser-Busch, Inc. 15 FRD 242, 252 (N.D. Ill. 1964); Wright and Miller, Federal Practice and Procedure (Civil -- 1970 ed.), 2174 and authorities cited. See also, Moore's Federal Practice, op. cit. supra, p. 7.

ALAB-613, 12 N.R.C. at 334, n.26.

For the reasons articulated above, Applicant requests the Board to deny Mr. Reed's Motion for Relief and require Mr. Reed to answer Applicant's interrogatories forthwith.

Respectfully submitted,

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