

NUCLEAR REGULATORY COMMISSION

ORIGINAL

ATOMIC SAFETY AND LICENSING BOARD

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In the Matter of:

UNION ELECTRIC COMPANY  
(Callaway Unit No. 1)

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DOCKET NO. STN 50-483-OL &  
50-486-OL

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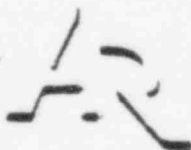
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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
BEFORE THE ATOMIC SAFETY AND LICENSING BOARD  
PREHEARING CONFERENCE

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In the Matter of:                   :  
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UNION ELECTRIC COMPANY            : Docket No. STN 50-483 OL and  
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  50-486 OL  
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(Callaway Plant, Unit 1)         :  
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Jefferson City, Missouri  
September 8, 1982

The Board convened, pursuant to notice, at 9:00 a.m.

BEFORE:

JAMES P. GLEASON, Esq., Chairman  
Administrative Judge  
Atomic Safety and Licensing Board

GLENN O. BRIGHT, Esq., Member  
Administrative Judge  
Atomic Safety and Licensing Board

JERRY R. KLINE, Esq., Member  
Administrative Judge  
Atomic Safety and Licensing Board

1 APPEARANCES:

2 ON BEHALF OF THE APPLICANT, UNION ELECTRIC COMPANY:

3 THOMAS A. BAXTER, Esq.  
4 DEBORAH B. BAUSER, Esq.  
5 Shaw, Pittman, Potts & Trowbridge  
6 1800 M Street, N.W.  
7 Washington, D.C. 20036

8 JOSEPH BURK, Esq.  
9 Legal Department  
10 Union Electric Company  
11 1901 Gratiot Street  
12 St. Louis, Missouri 63166

13 ON BEHALF OF THE REGULATORY STAFF:

14 ROBERT PERLIS, Esq.  
15 RICHARD GODDARD, Esq.  
16 Office of the Executive Legal Director  
17 Nuclear Regulatory Commission  
18 Washington, D.C.

19 GORDON EDISON, Esq.  
20 Office of Nuclear Reactor Regulation, NRC  
21 Washington, D.C.

22 INTERVENOR APPEARING PRO SE:

23 JOHN REED, Esq.  
24 Route 1  
25 Kingdom City, Missouri

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P R O C E E D I N G S

1  
2 CHAIRMAN GLEASON: We may begin the session. I would  
3 open by making a few preliminary comments to set the stage.

4 This session or conference, to those of you who  
5 perhaps are not aware, relates to an application by the  
6 Union Electric Company of St. Louis for a license from  
7 the Nuclear Regulatory Commission to operate a nuclear  
8 power facility, that is Callaway facility.

9 The three members sitting at this table are  
10 the Atomic Safety and Licensing Board which has been  
11 appointed to preside over a hearing dealing with this  
12 application. On your right is Mr. Glenn Bright, and on  
13 your left is Dr. Jerry Kline, and my name is James Gleason.

14 The specific proceeding that we're involved  
15 for today is to attempt to prepare for a hearing on what  
16 is essentially the second phase of hearings dealing with  
17 this facility. The hearings that dealt with the first  
18 phase were completed in St. Louis this past December,  
19 and the Board is currently writing a decision in  
20 connection with those hearings. The hearings that were  
21 completed dealt with allocations of construction defects  
22 and this proceeding is concerned with allocations of  
23 a lack of completion, if you will, of emergency planning.

24 This prehearing conference is provided for  
25 under Part 2, Section 2752 of the Commission Regulations,

1 and it is defined for the purpose of considering the  
2 finalization between the parties, the issues of the  
3 contentions that will be heard in this proceeding.

4           During the past several months, there had  
5 been a considerable amount of motions filed and meetings  
6 held attempting to resolve some final form, the issues  
7 for the hearing. It does not seem to the members of  
8 the Board that a great deal of progress has been made,  
9 at least as far as it is aware of. So we consider this  
10 conference opportunity to get some of these matters out  
11 on the table and discuss them to see what progress we  
12 can make towards getting this issue toward a hearing.

13           I have a suggested agenda. First, I have for  
14 consideration, I would ask you make appearances for the  
15 record and we will do that in the usual order of the  
16 Applicant, Intervenor, and any others that may desire  
17 to put in an appearance today.

18           MR. BAXTER: Appearing for the Applicant  
19 Union Electric Company, I am Thomas A. Baxter. To my  
20 left is Deborah Bauser, and immediately behind me is  
21 Joseph E. Burk. Mrs. Bauser and I are from the law firm  
22 of Shaw, Pittman, Potts & Trowbridge of Washington, D.C.,  
23 and Mr. Burk is Assistant to the General Counsel of  
24 Union Electric Company.

25           MR. REED: My name is John Reed, and I am an

1 Intervenor in this issue.

2 MR. PERLIS: My name is Robert Perlis. I'm  
3 an attorney with the office of the Executive Legal  
4 Director of the Nuclear Regulatory Commission. To my  
5 left is Richard Goddard, another attorney from our  
6 office. To my right is Gordon Edison, General Manager  
7 of Division and Licensing.

8 MR. GODDARD: I might state at this time,  
9 Judge Gleason, as to a request as to whether or not an  
10 appearance has been filed for me in this case, for the  
11 record, I am a member of the Board of the Highest Court  
12 of the State of Illinois and California and Oregon.

13 CHAIRMAN GLEASON: Mr. Goddard?

14 MR. GODDARD: Yes, sir.

15 CHAIRMAN GLEASON: All right.

16 What I would suggest, in order for us to  
17 attempt to make as much progress as we can at this  
18 preliminary hearing conference, I would like to have  
19 some discussion put on the record at this conference,  
20 the status of the construction public facility with  
21 respect to its completion and its operation.

1 CHAIRMAN GLEASON: We would like to have from  
2 the Staff what information it can provide with respect  
3 to availability of other documents that are necessary  
4 for the case. I think there is a second supplement  
5 to the NRC FEMA report

6 We would like to then follow with a discussion  
7 of the status of the emergency plans. We would like to  
8 have some discussion on the Intervenor's contentions.  
9 We would like to have some discussion also on the motions  
10 that are pending with the Intervenors and Applicants.

11 We would like to have some discussion on the  
12 status of the government representatives who have filed  
13 in this proceeding under 2.715.

14 I'd like to follow that with some discussion  
15 of the scheduling problems, and, finally, a discussion  
16 of any other matters that may come up.

17 Are there any additions or suggestions or  
18 revisions to the proposal?

19 Hearing none, we will proceed then with the  
20 status of the construction and operation of the plant.

21 Mr. Baxter.

22 MR. BAXTER: Mr. Chairman, I recently served  
23 on the Board and the parties a copy of a press release  
24 that Union Electric Company issued, which revised the  
25 schedule for the completion and commercial operation of

1 the Callaway Plant, and the latest examination of the  
2 status of construction shows that the unit is  
3 approximately 80 percent complete, and the fuel-up date  
4 is now scheduled for April of 1984, with commercial  
5 operations scheduled to begin in late 1984 or early 1985.

6 This is an extension by 10 months of our previously  
7 projected fuel-up date.

8 CHAIRMAN GLEASON: Mr. Baxter, when was that  
9 start up date?

10 MR. BAXTER: August 18, 1982.

11 CHAIRMAN GLEASON: Do you have a copy of that?

12 MR. BAXTER: Yes.

13 CHAIRMAN GLEASON: I'd like to have that put  
14 in the record, so, if you could copy that to have it  
15 put in the record. I realize it has been signed and  
16 documented, but I'd like it in there for our purposes.

17 It was August 18th?

18 MR. BAXTER: That's right.

19 MR. PERLIS: I have been informed that the Staff  
20 will be issuing a second supplement to the safety  
21 evaluation report for Callaway sometime in December. That  
22 will not be the final safety evaluation report. It will  
23 address emergency planning, but it may be that it will not  
24 close out the matter. So it may be addressed in future  
25 NRCs as well.

I have no hard information on the date for  
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1 the final panel review. The panel was originally  
2 planning on dealing with the matters raised by Mr. Reed  
3 in direct testimony rather than in a separate review,  
4 and the separate review was to follow at a later date.

5 CHAIRMAN GLEASON: Are you able to elucidate  
6 any further on what aspect of emergency planning this  
7 second supplement was to deal with?

8 MR. PERLIS: I believe it will address primarily  
9 the on-site emergency response facility.

10 CHAIRMAN GLEASON: You say the date, again, is  
11 December of 1982?

12 MR. PERLIS: That's correct.

13 CHAIRMAN GLEASON: And, just to reiterate,  
14 because I think even though it is not a pacing item  
15 as far as decision was concerned, at least at this time  
16 it is not, you have no information with regard to the  
17 date at which FEMA is going to make their final report,  
18 or, I should say, make a preliminary report.

19 I thought I had understood you, at some point  
20 in the past, to indicate that they were going to make  
21 some kind of a report in March of '82, but I could be  
22 mistaken. I could be confused with another case.

23 MR. PERLIS: I don't recall.

24 CHAIRMAN GLEASON: All right.  
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Mr. Reed, do you want to comment on anything that you have heard up to this point?

MR. REED: No, sir. Mr. Baxter's comments appear to be generally the knowledge that I have, and I have nothing wrong with what Mr. Perlis discovered.

I had anticipated a formal FEMA review of contentions after they were reduced to a more manageable lot than what I have now.

Did you want me to comment on anything as regards contentions now, or --

CHAIRMAN GLEASON: A little farther down the line. Now let's take the next on the list.

All right, if we could go through a discussion on the status of emergency plans.

Mr. Baxter.

MR. BAXTER: Mr. Chairman, it's my understanding that with respect to the Union Electric on-site radiological emergency response plan for the Callaway Plant, we consider the current conversion of that plant to be essentially final, and it's my impression that it has been reviewed by NRC regional personnel.

There's a local off-site radiological emergency response plan and four sets of --

CHAIRMAN GLEASON: Excuse me, Mr. Baxter, before you get to that, Mr. Perlis just indicated that there

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was a second supplemental for dealing with that was anti-  
cipated with emergency support facilities, and that would  
certainly be within your on-site emergency plan, and if  
yours have been accepted, then there's some problem here  
that --

MR. BAXTER: I didn't mean to indicate that the NRC  
has written a safety evaluation accepting the plan. I mean,  
from our standpoint, as far as the work we have to do, we  
think we are finished.

CHAIRMAN GLEASON: I see. When you made your comment  
that they had been reviewed by the NRC, I assumed that you  
meant they had been reviewed favorably.

Is that true? We have to know where these things  
are.

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1 MR. BAXTER: I guess I was basing my report  
2 on the fact that the plan was submitted quite some time  
3 ago, and we have received questions and responded to  
4 them and have not received any further inquiry. Now the  
5 emergency off-site facility has recently been constructed,  
6 and procedures, not that long ago, has been submitted to  
7 the Staff for its review.

8 MR. PERLIS: Mr. Chairman, if I might add,  
9 as I understand, the NRC Staff has substantially reviewed  
10 and has found the off-site plan acceptable. There were  
11 some recent revisions which have dealt with -- as would  
12 be characterized as minor updates, and these will be  
13 included in the next report.

14 CHAIRMAN GLEASON: All right. We are proceeding  
15 to discuss the off-site plan with Mr. Baxter.

16 MR. BAXTER: Yes.

17 There are, in existence, one draft off-site.

18 CHAIRMAN GLEASON: Can I stop you one moment,  
19 please. You indicated the current version of the on-site  
20 plan is, in your understanding, the final plan of -- is  
21 that correct--

22 MR. BAXTER: That's right.

23 CHAIRMAN GLEASON: Do you have a date when that  
24 was finalized?

25 MR. BAXTER: August, 1982.

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1 CHAIRMAN GLEASON: All right, go ahead.

2 MR. BAXTER: There are in existence one draft  
3 off-site local radiological emergency response plan and  
4 four sets of standard operating procedures for the  
5 company that drafted the plan, one for each of the four  
6 counties within the emergency planning zone. And in the  
7 case of Callaway County, it is a joint draft procedure  
8 with the City of Fulton.

9 This plan and these procedures were prepared  
10 initially by a consultant retained by the Union Electric  
11 Company, and this was done at the request of the State  
12 of Missouri, the emergency planning officials after  
13 they had been asked by the County for their assistance.  
14 The procedures had been available in draft form since,  
15 roughly, February or March of 1982, and there has been  
16 a commenting and a revision process underway since that  
17 time. At this point, none of the four counties or the  
18 City of Fulton have endorsed or executed, as to their  
19 own plan, any of the drafts that have been prepared and  
20 distributed for their comment.

21 There are still dialogues underway about what  
22 equipment is required by these local jurisdictions in  
23 order to implement the plan as well as who is going to  
24 pay for the equipment. There are still some changes  
25 to the actual document itself being discussed; although,

/1/3  
1 I think it is fair to characterize those as relatively  
2 minor and not major in terms of actual paper revisions  
3 to the procedures themselves and the off-site plan.

4 In anticipation of a potential hearing this  
5 October, the State of Missouri forwarded its own plan,  
6 a radiological plan, and the current draft of the off-site  
7 local plan for procedures to FEMA, in order that FEMA  
8 could prepare testimony in response to Mr. Reed's  
9 contentions. It is understood by all parties that  
10 counties and the City of Fulton have not yet endorsed  
11 those plans as to their own -- and the transmittal of the  
12 plans to FEMA which was for the purpose of hearing  
13 preparation.

14 The State of Missouri has gone through two  
15 drafts this year of its radiological emergency response  
16 plan for Callaway, and it has been submitted to FEMA in  
17 August of 1982. As far as I know, that plan is settled  
18 except for, of course, the review process which FEMA  
19 will undertake and will presumably provide comments and  
20 make some changes which may be needed at that point.

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point.

1 That completes my summary.

2 CHAIRMAN GLEASON: There seems to be some confusion --  
 3 I'll say there is some confusion, at least in my mind,  
 4 and perhaps to other members of the Board, when you talk  
 5 about a local on-site response plan. When you say that,  
 6 what does that mean? If I understand correctly, within  
 7 the emergency planning zone, there are four counties that  
 8 impact the area, one in a major way and another in a  
 9 very minor way.

10 Is it the plan to have each of the counties  
 11 produce an emergency response plan, or are they all par-  
 12 ticipants in a unified emergency response plan?

13 MR. BAXTER: The way it is currently arranged, there  
 14 is one plan document, but it is, if you will, a setting for  
 15 the delineation of the general concepts that govern the  
 16 off-site response, a general statement of functional  
 17 responsibilities between the state and local governments  
 18 and the utility itself, and how those functions are  
 19 divided. It is intended that that plan, when endorsed  
 20 by all of the jurisdictions affected, will be a single  
 21 governing plan. However, each county has retained for  
 22 itself, emergency-planning decision making in the event  
 23 of an actual radiological emergency. They have not dele-  
 24 gated to a lead county, any lead county, the authority  
 25 to implement or make an emergency response decision.

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1 So there will be four individual sets of procedures. They  
2 had been prepared by the same consultants, and I think  
3 there has been a dialogue among local officials so that  
4 there is a strong resemblance from procedure to procedure,  
5 but they each do have their own organization and their  
6 own separate implementing detailed procedure on a single  
7 plan.

8 The exception to that is that the City of Fulton  
9 and Callaway County have jointly -- are jointly working  
10 together to develop a single operating procedure for  
11 themselves.

12 CHAIRMAN GLEASON: Now within the ETC, not being  
13 familiar with the local jurisdictions, are there other  
14 municipalities involved in this planning process? Is  
15 Fulton the single local community as opposed to county  
16 governments, or in this case, SOP?

17 MR. BAXTER: There are municipalities. It is a  
18 matter of discussion between the company and the affected  
19 jurisdiction, and of course a matter of contention by Mr.  
20 Reed as to whether or not there needs to be formal plans  
21 of some kind or procedures developed for these local  
22 municipalities other than the City of Fulton. They have  
23 not been to date, and to my knowledge, there are not  
24 resources owned or controlled by those communities which  
25 will be called upon in the event of an emergency response



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need in the Callaway plant.

There is discussion also as to whether or not a single letter of an agreement, perhaps by the local towns, agreeing to follow the guidance and decisions that are made by the counties in which they are located might solve the problem. But it is currently an open question, Mr. Chairman.

CHAIRMAN GLEASON: Perhaps it will be helpful if you could describe a little bit, the relationship of the state to these local plans. What role does the State play with respect to the role of the local plans? If, for example, one of the four counties does not approve a plan, what role does the State have to play?

MR. BAXTER: It is my understanding under the regulatory scheme, that the NRC and FEMA implement that they are looking to see whether or not the functional criteria established, the FEMA printing documents, are fulfilled. It is possible, if there is a failure to fulfill a functional responsibility at one level of government, that it can be picked up at another level of government.

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1           So that it would be conceivable, if there was  
2           inadequacy in some given area, at a county level, that  
3           consideration could at least be given as to whether the  
4           State of Missouri or one of its agencies could pick up  
5           that responsibility so that overall, the status of off-site  
6           emergency preparedness would still meet NRC standards  
7           and provide reasonable assurance that the public safety  
8           be protected.

9           In terms of the review process, it is my  
10          understanding, under FEMA regulations, that the State  
11          is the authority which does forward its own plan and  
12          the county plans to FEMA for review. So to that extent,  
13          they have some de facto, responsibilities, I guess, in  
14          terms of the evolution of local plans and the  
15          determination of their adequacy.

16          CHAIRMAN GLEASON: I presume that in Missouri,  
17          like in most other states, local governments are creatures  
18          of state governments. And also, there is a superceding  
19          role -- I thought it was important to get that into the  
20          record or at least get your comments. Is there anything  
21          that you have heard that you heard that you disagree with,  
22          Mr. Perlis?

23          MR. PERLIS: No sir.

24          CHAIRMAN GLEASON: All right. So you generally  
25          agree with what you have heard, Mr. Perlis?

1 MR. PERLIS: That's correct.

2 CHAIRMAN GLEASON: Mr. Baxter, who specifically  
3 -- which corporation along with other officials of the  
4 Applicant, are working together with local government  
5 in approval with these plans -- who is it exactly who is  
6 working in this area?

7 MR. BAXTER: NUS Corporation initially had  
8 personnel go out into the local areas around the  
9 Callaway Plant as part of the process of initially drafting  
10 the off-site plan and procedures. There were several  
11 questionnaires distributed by NUS to local governmental  
12 agencies and volunteer organizations who might be called  
13 upon in event of a radiological emergency, and they were  
14 also interviewed in many cases.

15 For a time then, NUS, Union Electric and State  
16 officials all were involved in discussing the first  
17 drafts of these plans and procedures with the local  
18 jurisdictions. At this point, the interface is mostly  
19 with Union Electric in the form of Mr. Stiller, who is  
20 the Company's Manager of Nuclear Safety and Emergency  
21 Preparedness, and he is located at the Callaway Plant.

22 CHAIRMAN GLEASON: Perhaps you're not the  
23 person to answer this question, but I have been somewhat  
24 confused by at least some of the responses, the motions  
25 filed as to who represents local government in the State

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1 of Missouri. Who represents the counties? What is your  
2 understanding of it?

3 MR. BAXTER: Mr. Chairman, do you mean with  
4 respect to this proceeding?

5 CHAIRMAN GLEASON: Yes.

6 MR. BAXTER: Well we have a strange situation.  
7 I don't think it is unique to this particular licensing  
8 proceeding, either.

9 It happens that the issues Mr. Reed has chosen  
10 to raise here deal for the most part with the adequacy  
11 of off-site emergency response planning, and this of  
12 course falls within the purview and responsibilities of  
13 local and state governments and not the Union Electric  
14 Company. And except for the Missouri Public Service  
15 Commission, we have no other state agency that has any  
16 status in this case, and they are a participant under  
17 Section 2.715C, and it is my impression that they have  
18 no -- certainly no direct responsibility with respect to  
19 these issues within the scheme of the State of Missouri  
20 government.

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And with respect to the local counties, there are no county agencies who are parties that are individual-elected representatives at various levels who petition and become participants under 2.715C earlier in the proceedings.

Of course, there are county attorneys and city attorneys affiliated with these jurisdictions, but they have not chosen to become formal parties or to represent these agencies formally. We have been attempting, because we have the burden of proof in this case, and it is in our interest, to work informally with state and local officials in being responsive to the needs of this proceeding and develop a meaningful adjudication of whatever Mr. Reed's contentions are which are virtually set forth here.

Today, there really is no one agency that is represented formally at this proceeding that has this off-site emergency plan responsibility. I think it is going to be up to the Applicant and the Staff, working cooperatively with them, to put on a case that is eventually required.

CHAIRMAN GLEASON: Do you recall earlier in this proceeding that the Board requested a representations statement be made by those local officials who requested an opportunity to participate? And the purpose of that

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1 request was to ascertain whom they represented, and I  
2 have not reviewed those papers for a while. But it was my  
3 fair impression that the papers that were ultimately  
4 submitted or substantially submitted indicated that they  
5 do represent in fact the counties they came from. What  
6 I gather from what you have said, you have a  
7 different understanding of that.

8 MR. BAXTER: I simply don't recall, Mr. Chairman.  
9 It wasn't my understanding, and I have not reviewed those  
10 papers myself. But I may have someone with me here today  
11 who could take some time to check it out.

12 CHAIRMAN GLEASON: Are there any representatives  
13 of local government here? Sir, what is your name?

14 MR. WRIGHT: I am Robert Wright, and I am from  
15 Callaway County.

16 CHAIRMAN GLEASON: Mr. Wright, I believe you are  
17 one of those -- a letter was requested to be sent in,  
18 a letter was received concerning this matter. What is  
19 your view, as far as your representation is concerned?  
20 Are you here to represent or are you participating as  
21 representing Callaway County or are you not?

22 MR. WRIGHT: I am here mainly to be informed,  
23 to be kept informed as to what goes on in this proceeding.  
24 I guess while I am not an official participant, I am  
25 very interested in what takes place here, how the Court

1 rules in favor of Mr. Reed or in favor of the Union  
2 Electric Company. So what I want is a good emergency  
3 plan that could be implemented that will protect the  
4 citizens of Callaway County in the event of an incident  
5 at the plant.

6 CHAIRMAN GLEASON: Thank you, Mr. Wright.

7 Mr. Reed, you can just respond to anything that  
8 you have heard or any other comments that you wish to  
9 make concerning the status of the plant.

10 MR. REED: Mr. Baxter gave a pretty comprehensive  
11 report.

12 But, there are some contentions over whether or  
13 not a lead county exists as it is described in the plan  
14 under notification and that no small towns have been  
15 included. Mr. Stiller is negotiating with local governments  
16 to improve the condition, whether its funding or  
17 equipment, involved in developing the plan. This has  
18 been a recent change, and there has been some break through  
19 in this particular area.

20 The county representatives that were included  
21 in this hearing under 2.715A were Judge Luekey, Montgomery  
22 County, Judge Wright, out of Callaway, Jim Crow, who is  
23 the Civil Defense Director for Osage County and  
24 represented the county court, Judge Lodtman, who  
25 represented Gasconade County, and Mayor Sam Burk of the

1 incorporated County of Morrison, was a participant under  
2 2.715A.

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1           The previous mayor of Chamois is no longer  
2 in office and I don't know whether the new mayor wants  
3 to fulfill his role or not. Those were the people who  
4 had effectively intervened under 2.715A, although, they  
5 are not, according to the meeting, they are not a party.  
6 But, they do have a right to introduce evidence and  
7 interrogate witnesses and cross-examine and submit  
8 conclusions and fact. They are parties without being  
9 formal parties, to my understanding.

10           CHAIRMAN GLEASON: Do you have some comments  
11 that you would care to make with respect to the status  
12 of these unified -- the unified status of this unified  
13 emergency response plan, the operating procedures?

14           MR. REED: Yes sir. Aside that there is a  
15 general plan and four SOPS for each county or, in the  
16 case of Fulton and Callaway, a joint SOP. I still have  
17 some problems with the format, according to the 6045,  
18 which says that plants should make clear what is to be  
19 done in an emergency, how it is to be done and by whom.

20           I find that most of these plans and SOPs  
21 indicate what is to be done and assigns the responsibility  
22 or lists who could do this. However, the how portion of  
23 the act is omitted and so the plans fall short in that  
24 respect. I have a contention that covers that particular  
25 lack of implementing instructions.

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1 I'm the Supervisor of Plans in Montgomery  
2 County and Gasconade. Over there, we have some  
3 difficulty in getting our input, actually entered into  
4 the plan. This is just a matter of negotiation with the  
5 utility and of having the Mexican standoff until such  
6 time as we get in the plant, those items that we make  
7 should be in the plan.

8 Currently, there has been no withdrawal of  
9 planning authority by the counties from the State, so  
10 the State still has the planning authority, and if NUS  
11 is working for the State, then UE still has a handle  
12 on the local planning; and therefore, it is appropriate  
13 that I deal with Mr. Stiller or that the counties deal  
14 with Mr. Stiller in the process.

15 There has been a significant improvement in  
16 the relationship between the Applicant and the County;  
17 and the result, with the formalization of equipment  
18 document, I prepared to reduce a large number of the  
19 contentions that I have. And I would also be amicable  
20 to combining some and possibly the elimination of others  
21 if I have an opportunity to amend my final particularization.  
22 Counsel and I have discussed this with Staff, and it  
23 appears appropriate, based upon what is beginning to  
24 happen in the planning process now.

25 CHAIRMAN GLEASON: What is your understanding,

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1 Mr. Reed, of the relationship between local plan to the  
2 State plan?

3 MR. REED: The local plans are an independent  
4 plan, they must interface with the State plan, that is,  
5 not contradict the State plan. However, the local  
6 authorities have full autonomy to decide what they will  
7 do. Now whether it complies, we'll assume that their  
8 intention is to comply with the Regulation 654. Whether  
9 they can comply because of personnel and equipment  
10 capabilities does not remove from them the obligation  
11 to attempt to fulfill a requirement.

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requirement

1 However, the State plan calls for all local capa-  
2 bilities to be exhausted before local government requests  
3 State assistance.

4 The counties have a problem with smaller incor-  
5 porated municipalities when you talk about evacuation  
6 because they say we will not fund, for example, the  
7 evacuation of Morrison. That will be a local responsi-  
8 bility. They have their own tax base; as a result, what-  
9 ever they do, falls upon their heads to respond. And if  
10 the counties, Gasconade and Montgomery, for example, feel  
11 that there should be an inclusion of local governments  
12 in the planning process and they should have a function  
13 outlined in the local plan, whether they have the equip-  
14 ment to perform a function, they have -- I have to speak  
15 in terms of a military -- they have the command authority  
16 to order the evacuation of a town independent of a county  
17 authority to do that. And in some cases, the counties  
18 do not have the authority to order a town to do anything  
19 within the -- a case in point, rabies. Dealing with  
20 dogs in a county vaccination. Of course, they do not  
21 have the authority to order that in a small town; there-  
22 fore, they had to get the consent of the town government  
23 to pass a like ordinance meant to make what the county  
24 could do within the county applicable to that one little  
25 island of independent authority which was the local

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1 incorporated town. That again is another point in my  
2 contention that the local plans, they do not go down far  
3 enough with their command authority so that these people  
4 can be included -- this is something again that Mr. Stiller  
5 is working out with the county courts. I'm present at  
6 most of those meetings. I don't know if I answered your  
7 question or over-answered your question.

8 CHAIRMAN GLEASON: How many local municipalities are  
9 there within the emergency planning board which have  
10 government ability?

11 MR. REED: Again, Callaway County, aside from the  
12 large municipality of Fulton, which is included in the  
13 county plan, the City of Mokane, is an incorporated  
14 community. It has its own mayor and downtown. In Osage  
15 County, the City of Chamois, or the town of Chamois, is  
16 incorporated. In Gasconade County within the --

17 CHAIRMAN GLEASON: Let's go off the record for a  
18 moment.

19 (Discussion off the record.)

20 MR. REED: I think I ended with Osage County and the  
21 City of Chamois. In Gasconade County, within the geo-  
22 graphical EPZ that has been established by the county,  
23 we have the county of Morrison and the incorporated town  
24 of Gasconade which is right on the river boundry. In  
25 Montgomery County, the town of Ryland, is an incorporated

1 town. That lists all of the incorporated towns within  
2 the geographical EPZ.

3 CHAIRMAN GLEASON: Do those municipalities have  
4 resources that could be utilized in some emergency evacua-  
5 tion, if it were necessary?

6 MR. REED: Yes, sir. In Chamois, they have a volunteer  
7 fire department which would be utilized to evacuate people  
8 within the Chamois-Morrison line along the river. The  
9 river divides the four counties.

10 CHAIRMAN GLEASON: Do they have a local police?

11 MR. REED: Yes, sir.

12 CHAIRMAN GLEASON: Do they have a volunteer fire  
13 department?

14 MR. REED: Yes sir.

15 CHAIRMAN GLEASON: Do they have jurisdiction from the  
16 county or from the state?

17 MR. REED: It is under county control.

18 CHAIRMAN GLEASON: Local roads. Do they have  
19 jurisdiction over local roads?

20 MR. REED: Within the incorporated towns, yes, sir.  
21 And in a sense they create the predominant population  
22 in the EPZ, they have to have some input into the planning  
23 so that their plans don't conflict with the county plans  
24 or whether it's a formal written policy, it should be  
25 compatible with the county plan just as a county plan  
should be compatible with the state plan.

1 MR. BAXTER: One moment, please. The City's  
2 Volunteer Fire Department, they are private organizations  
3 which are not within the jurisdiction or chain of command  
4 of the local municipality government.

5 CHAIRMAN GLEASON: What is the taxing base for --

6 MR. REED: As far as the volunteer fire  
7 department, Mr. Baxter is correct. However, in some cases,  
8 the members of the volunteer fire department are the mayor  
9 and the members of the town council. And these individuals  
10 are directly linked to the counties. They can get  
11 information, then they have the organizational capability  
12 to activate immediately a piece of equipment or a group  
13 of men who live within that immediate area. And in the  
14 case where they have a night constable, that constitutes  
15 the local law enforcement official. He is empowered by  
16 State laws to do anything that a law enforcement official  
17 is -- he can enforce State law and city ordinances.

18 CHAIRMAN GLEASON: All right. Did you have  
19 any further comments that you want to make for the record  
20 with respect to the status of the emergency plan?

21 MR. REED: Yes sir. I would like to make a  
22 statement.

23 CHAIRMAN GLEASON: Let's go off the record.

24 (Discussion off the record.)

25 MR. REED: Since none of the local community

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1 counties or cities have accepted a particular plan that  
2 has been presented to them, I would state that no local  
3 plan exists to create a local plan, if it exists, to be  
4 acceptable to a county. May I read a part of a letter  
5 at this time to indicate more exactly what I am trying to  
6 say, sir?

7 CHAIRMAN GLEASON: If the parties have no  
8 objection.

9 MR. REED: Tom, this is the letter that you have  
10 seen already. Do you have any objection?

11 MR. BAXTER: No. I think it is simply what I  
12 said earlier, but you may read it if you like.

13 MR. REED: This is from the County of Montgomery,  
14 from the Office of the County Clerk. (Reading.) "The  
15 County Court, at this time, desires to go on the record  
16 as having rejected all past plans which have been  
17 presented by the Union Electric Company and are  
18 refusing to accept any future plans which may be  
19 presented to this Court until all details of such plans  
20 have been resolved to the complete satisfaction of this  
21 Court and all issues of funding for the implementation  
22 of such plans meets the Court's standards and  
23 requirements."

24 This is signed Fred Lueky, the Presiding Judge,  
25 Robert Schmidt, the Associate Judge, and



1 Ernest Blaue, an Associate Judge. It is dated  
2 August 5th, 1982.

3 CHAIRMAN GLEASON: Mr. Reed, with respect to  
4 that document that you have just read, I advised my  
5 colleagues last night and I will see that it is sent  
6 through regular channels, that in a hearing procedure,  
7 one does not send comments to the Chairman of a Board  
8 or any other individuals without going through regular  
9 process of having that circulated to all the parties.

10 MR. PERLIS: May I indicate for the record that  
11 I have just received a letter this morning.

12 CHAIRMAN GLEASON: One has to be very careful  
13 with respect to material like that, and I am sure if I  
14 asked my colleagues, that they had not received it.  
15 When there is something to be communicated to the  
16 Chairman or the members of the Board, or any one else  
17 that is represented in this proceeding, it has to be sent  
18 to the Nuclear Regulatory Commission's Office in  
19 Washington, D.C. where it is put in the docket and  
20 distributed to all of the parties. The reason I bring  
21 this up it is because he has just read an excerpt from  
22 one of the letters.

23 MR. REED: Yes, I know. It was addressed to  
24 Mr. Stiller. Mr. Baxter, do you recall when you got  
25 that letter originally?

1 MR. BAXTER: It was sometime in August.

2 MR. PERLIS: Again, I just received it this  
3 morning and also, I wonder if we might at this point  
4 enter that letter into the record?

5 CHAIRMAN GLEASON: No objection. The whole  
6 letter will be entered into the record. Please give the  
7 reporter a copy of that letter please.

8 I gather, Mr. Reed, this is aside from the  
9 question of representation that you are in this proceeding  
10 as a representative of any counties.

11 MR. REED: No sir.

12 CHAIRMAN GLEASON: You are in here as an  
13 individual representing your own --

14 MR. REED: Yes sir.

15 CHAIRMAN GLEASON: Mr. Perlis, do you have any  
16 comments that you would like to make at this time?

17 MR. PERLIS: No, Mr. Chairman.

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1           CHAIRMAN GLEASON: I would like, then, to go to  
2 some discussion with respect to the status of the Inter-  
3 venor's contentions.

4           At the special prehearing conference that was  
5 held March 24th, 1981, because the emergency plans had not  
6 been finalized either at the on-site or off-site plants --  
7 in fact, neither the on-site or the off-site -- after  
8 conferring with Mr. Reed, two of his three contentions  
9 were accepted on what we might call a provisional basis,  
10 the provision being that after the local plans, the on-site  
11 plans had been, to some degree, at least, completed, he  
12 would be required to file a basis for his contentions  
13 with more specificity than he was able to do at that  
14 point.

15           This was a suggestion made, and I think a good  
16 one, by the Applicant's attorney, and sometime within the  
17 past two month period Mr. Reed filed his contentions which  
18 he was required to file to specify his contentions, which  
19 resulted in, I believe, a considerable list of contentions,  
20 approximately some 99 in number, which then precipitated a  
21 veritable deluge of responses in opposition from the  
22 Applicant, and also from the Staff, and if I count cor-  
23 rectly, of the 99 contentions that the Intervenor sub-  
24 mitted, the Applicant opposed all but 8 and the Staff  
25 opposed all but 25.

1           It became obvious to the Board at that time that  
2 there was a considerable obstacle that had been raised in  
3 dealing with these matters holding to the conduct of the  
4 hearing, and this, of course, was before we received  
5 notification of the delay in the completion of the plant,  
6 its construction, and a delay in fuel loading.

7           I do believe that, without going into any great  
8 detail on it, having considerable discussion at this point  
9 with respect to both the responses submitted by the  
10 Applicant and the Staff, there appears to me to be at  
11 least some confusion with respect to what is required of  
12 an Intervenor at this stage and what is required of an  
13 Intervenor if he has to subsequently respond to a motion  
14 for summary disposition.

15           The purpose of it, and I say this, I make  
16 these comments because I'm not sure that the Intervenor  
17 understands them, and we do understand that he is a pro  
18 se intervenor and, therefore, the Board is constrained  
19 and obligated to take a little bit more time and attention  
20 to point out some of the nuances of the law, if you will.

21           The purpose for requiring specificity or a basis,  
22 and that the basis be specified in some detail of a con-  
23 tention of an issue is to help assure the Board at a  
24 pleading stage that there is a genuine issue to go to a  
25 hearing.

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Generally, it would be more appropriate, I guess, to say that to assure that a hearing is not going to be improperly held, keeping in mind that it is not mandatory that a hearing be held at an operating stage. It should be held if there is a person who has a cognizable interest, and also who has an issue that relates to the operation of the facility itself, an issue that is litigable.

It is not necessary, and there is another purpose, of course, for the requirement for specificity, and that is that parties are entitled to know what issues they have to defend against.

In a proceeding like this, as any court proceeding, it is not the one where surprise has any place as a control element. Each party is entitled to know what the other party is claiming and what his case is.

The petition, therefore, has to be adequate to show that there is a sufficient foundation for the allegations that are being made; there is some reason, if you will, for the claim that the Intervenor is making.

It is very difficult to put into some concrete statement all of the requirements and all of the non-essentials that go to form an adequate basis for a contention.

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There are several things that one does not have to do. One does not have to produce evidence to support, at this stage, his contention. And the merits of the contention don't have to be looked at, as far as the Board is concerned.

Having said that, I have a great deal of difficulty in understanding many of the objections that have been submitted at this point by both the Applicant and the Staff. I'm just going to take three of them for purposes of trying to make progress in getting these issues down to where the hearing can be held.

If we take the Intervenor's contention on Page 3, if you have this document with you, which is designated as Contention (a)(1) -- I guess it would be Contention 1(a)(1) -- these particular contentions I've just picked at random. They happen to be contentions that are posed by both the Applicant and the Staff, and I would just discuss some of the responses they make.

It says that local plans do not include letters of agreement with each local agency or organization indicating an acceptance of a response role in the proposed RERP or SOP.

The response by the Applicant, on Page 8, says: "Proposed Contention 1(a)(1) concerns the alleged need for 'letters of agreement with each local agency or

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1 organization indicating an acceptance of a response role  
2 in the proposed RERP or SOP'."

3 Skipping a sentence, the Applicant says: "It  
4 is unclear what specific organizations Mr. Reed believes  
5 should have letters of agreement with the local  
6 governments, which letters should be included in the  
7 off-site or the site plans."

8 In my view, that is not required, gentlemen,  
9 at this stage in this proceeding. That is a matter that  
10 you can find out through the discovery process. And  
11 then, of course, if Mr. Reed does not have at that time  
12 some basis, which he is required to do under the  
13 regulations, for that allegation, you can make a  
14 motion for summary disposition because there is no valid  
15 issue to come before the Board.

16 Going on in other parts of that response, it  
17 says that Mr. Reed fails to even mention these agreements,  
18 the ones that are being argued in his contention, and  
19 I really do not see any obligation for an Intervenor at  
20 this stage to mention that.

21 If we go to Page 4 of Mr. Reed's contentions,  
22 at 1(a)(3), he indicates: "Not all local organizations  
23 have staff to initiate and maintain a response on a  
24 continual basis."

25 The response is, by the Applicant, in that this

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1 contention is unreasonably vague and, hence,  
2 unacceptable. Mr. Reed asserts as a basis that personnel  
3 staffing is inadequate in many departments and agencies  
4 or organizations under normal conditions. He does not  
5 elaborate on this assertion or otherwise indicate what  
6 organizations he believes require additional staffing . . . "

7 I do not believe that is required, under my  
8 reading of the case law of the Commission. It's certainly  
9 something that can be reached in the discovery process.  
10 It certainly can be challenged in a motion for summary  
11 disposition.

12 I'll just go through one more and perhaps make  
13 the point that I'm trying to make more valid.

14 On Page 8 of Mr. Reed's contention it says 1(1).  
15 I believe that's supposed to be L(1). "No agreements  
16 exist with local ambulance districts to transport such  
17 victims."

18 The response to the Applicant says: "The  
19 Applicant objects to the proposed contentions which  
20 concern the need for agreements with local ambulance  
21 districts to transport radiologically contaminated  
22 individuals. The equipment used by local ambulance  
23 districts is owned by the local counties; hence, the  
24 county is automatically entitled and authorized to use  
25 such equipment."

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1                   Now, it seems that that goes to the merit of  
2 that allegation, and I just thought I heard some comment  
3 a few minutes ago with respect to the independence of  
4 these ambulance districts, and so I have to raise the  
5 question as to I know in the county that I had some  
6 experience with I know there is a certain independence  
7 of ambulance districts or -- excuse me; I didn't mean  
8 ambulance districts, I meant fire departments, which also  
9 had the responsibility for ambulances, and I don't know  
10 what they do in these counties we're talking about. But  
11 I know there is a certain independence, and whether those  
12 agreements are necessary or not, I don't know. But I  
13 presume that is something that can reached through that  
14 process, a motion for summary disposition after discovery  
15 is completed.

16                   The point that I'm attempting to, and have been  
17 attempting to raise is that I think that one has to be  
18 very careful in responding to contentions of this nature  
19 as far as attempting to get on with the process that  
20 we're all engaged in, and although I would not want or  
21 you should not construe these comments of mine as an  
22 official ruling by this Court with respect to them, I  
23 have to say that that kind of response -- and I don't  
24 know what discussions have been held with Mr. Reed with  
25 respect to these matters and I don't know what view he

1 has with respect to the Staff, and particularly the Staff,  
2 and the Applicant participating in session with him with  
3 respect to the viability or non-viability of his  
4 contentions, whether he is being asked to withdraw something  
5 that he shouldn't withdraw based on some of the responses  
6 that have come in.

7 I say that because there have been a number of  
8 references to that, you know, if he has time he'll reduce  
9 or consolidate, and so forth, but I just wanted to make  
10 sure that the Intervenor is being dealt with fairly.

11 Obviously, the Board has not had time to respond.  
12 In fact, the Board doesn't know at this point in this  
13 discussion, we have to get into it, as to whether it has  
14 to respond to this.

15 So I throw it open to discussion. I have been  
16 speaking quite a while, and I'd be glad to give you a  
17 chance to defend yourself, if you feel that's necessary,  
18 or to make any comments for the record that you care to  
19 make.

20 MR. REED: Sir, if I can defend this a little  
21 bit, I haven't been pressured either by Applicant or by  
22 the Staff to reduce any contentions.

23 We have discussed consolidation of items  
24 contained in subcontentions contained in Contention 3  
25 under 0654 and those same items that were covered under the

1 provisions of Paragraph 5047, because they were like  
2 items and could be consolidated for ease of handling,  
3 in general.

4           There is some items, -- oh, if you'll go to  
5 Page 3, for example, Contention 4(a) is relevant to  
6 Subcontention 6 in the third contention, and it's quite  
7 possible that these two could be consolidated without  
8 loss of material meaning and would eliminate a lot of  
9 additional duplication and writing.

10           It would be merely a matter of rephrasing part  
11 of the subcontention or eliminating part and paraphrasing  
12 the contention as it exists now.

13           And 6 of Paragraph 3, not all principal  
14 organizations have 24 hour operational capability for  
15 protracted periods, as required in A(4), and protracted  
16 periods as required in A(4). And in Item 4(a), we find  
17 each principal response organization lacks staff to  
18 respond and augment an initial response on a continuous  
19 basis.

20           Those are basically the same charge made in  
21 two separate places, and there's no problem with a  
22 consolidation.

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1           The Staff has been very clear in elucidating  
2           that if an item is dropped that it is, in fact, dropped  
3           and cannot be recovered later on as a point of argument.  
4           I'm well aware that if an item is dropped that it's  
5           dropped from the hearing and ceases to be a point of  
6           contention.

7           That's all I had to say in defense of the  
8           Staff and Applicant as regards possible pressure to get  
9           me to take a particular course of action.

10           CHAIRMAN GLEASON: I didn't use the word  
11           pressure, I believe. That may have been made on  
12           erroneous information.

13           Go ahead, Mr. Perlis.

14           MR. PERLIS: Yes, if I may. Both in our recent  
15           response to Mr. Reed's contentions and as I've continually  
16           told Mr. Reed in our meetings, the Staff regards almost  
17           all, if not all of his contentions, as relating to  
18           political issues, and that has never been a problem we  
19           have raised.

20           We do feel, and we continually felt that his  
21           contentions are overly vague and lack necessary  
22           specificity. I guess we're in disagreement with the Board  
23           on that point.

24           I would like to point out that once his  
25           contentions are admitted the burden is no longer upon

1 Mr. Reed. It is, as Mr. Baxter mentioned earlier, upon  
2 the Applicant and, to some extent, the Staff.

3 Many of his contentions would be extremely  
4 difficult to defend against, and, as the burden is switched,  
5 it's not just that we would be defending against them  
6 but we would have to prove that they are not true without  
7 getting more specificity from Mr. Reed.

8 If I could, I would like, in some of his  
9 contentions, if they were in a technical area, to be similar  
10 to his contentions saying the Callaway Facility ECCS is in-  
11 adequate, period.

12 Again, I don't think those contentions would be  
13 accepted in a technical area, and I think --

14 CHAIRMAN GLEASON: Neither do I.

15 MR. PERLIS: Well, in this area, I might also  
16 point out that Mr. Reed does have a great deal of  
17 expertise. As he has stated, he is, if you will, a  
18 representative for a consultant with two of the four  
19 counties involved. He is not a neophyte in this area  
20 by any means.

21 I don't think it would be very difficult for  
22 him to specify in many of his contentions what agreements  
23 he's talking about, what local areas he's dealing with  
24 and why he feels they're necessary.

25 In many cases, the Staff takes the position that

1 they are not.

2 CHAIRMAN GLEASON: All right.

3 MR. BAXTER: Mr. Chairman --

4 CHAIRMAN GLEASON: Mr. Baxter.

5 MR. BAXTER: -- we do feel that our objections  
6 to Mr. Reed's proposed particularizations of his  
7 contentions are valid.

8 I might make one comment before I start my  
9 statement, and that is that we did not have an  
10 opportunity to talk to him between the time he filed  
11 his proposed contentions and the time our responses were  
12 due, which, under the regulations, is 15 days. The  
13 meetings went on before he filed and after we filed our  
14 responsive pleading.

15 But the question about when in the course of a  
16 proceeding Intervenors have to be specific about proposed  
17 contentions has been receiving a lot of attention by  
18 licensing boards lately, and it has revolved around the  
19 availability of adequate documentation to the Intervenor.  
20 And emergency plans have particularly been singled out  
21 lately in a referral by the licensing board in the  
22 Catawba proceeding, which is an application by the Duke  
23 Power Company, which the Appeal Board recently acted on  
24 in terms of a ruling that Intervenors are required  
25 to be specific at the outset of a proceeding but the

1 availability later of documentation might be good cause  
2 for adding new issues.

3 We took a reasonable approach, I think, to this  
4 case, recognizing in the beginning, as you stated, that  
5 without the availability of draft plans Mr. Reed couldn't  
6 do that job.

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1 But the whole purpose in waiting this year and  
2 a half was to get the specificity that I think we're  
3 entitled to.

4 It's true these questions could be asked on  
5 discovery. I might add, parenthetically, we've asked  
6 and haven't gotten any answers yet.

7 But the burden of proof passes to us when the  
8 contention is admitted, and, as I've indicated, off-site  
9 emergency planning is a unique set of issues in NRC  
10 adjudicatory proceedings because, while the burden is  
11 mine, all the responsibilities and most of the effort  
12 required to overcome that burden will have to rely on  
13 State and local government, and that includes the  
14 preparation of affidavits in support of any motions for  
15 summary disposition we might file.

16 And I think the case law has recognized that  
17 the Intervenors are required in proposed contentions to  
18 address available documentation, whether it is the final  
19 safety analysis report, environmental report, Staff's  
20 environmental impact statement, or, in this case, a  
21 draft of emergency response plans and to say with some  
22 specificity what is wrong.

23 With respect to the example of personnel  
24 staffing, Mr. Reed could have written that a year and a  
25 half ago.



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1           I don't think he has to list every position,  
2 every person, but, for instance, if the allegation is  
3 that the sheriff's reserve doesn't have enough people  
4 available to man the traffic control point designated  
5 in the plan, then he can say that. And, at least on  
6 summary disposition, rather than including all the  
7 ambulance operators, the fire departments, the police,  
8 the county clerk, and all other personnel that he might  
9 conceivably have in mind, we have some definition at the  
10 outset and summary disposition can be more specifically  
11 aimed at what is really wrong.

12           And, as Mr. Perlis said, I think it's fair for  
13 the Board to take into account Mr. Reed's expertise and  
14 involvement in the matters. He has for two years been  
15 active in various roles in the review of these local  
16 plans.

17           If it were simply my capabilities that were  
18 involved in overcoming the case, it might be a different  
19 story, but I think when we're talking about State and  
20 local government we should be strict about these  
21 requirements that the NRC has, and I think that they do  
22 require the Intervenor to address relevant documentation.

23           And, with respect to some basis for the  
24 proposition set forth, I think it's necessary for  
25 Intervenor to say why they think staffing, for instance,

1 is inadequate. And I contrast this, for instance, with  
2 the contentions that were litigated last winter by the  
3 Joint Intervenors, who had their reasons why they felt  
4 the concrete wasn't going to work, and the citations,  
5 where it was available to NRC documentation and others,  
6 that they felt supported that, so we knew what to  
7 address.

8           Otherwise, to allow an Intervenor to simply go  
9 through all the regulatory criteria, which is what  
10 Mr. Reed has essentially done in saying you don't meet  
11 them, in my opinion, really, to my way of thinking, just  
12 negates any purpose for a basis in specificity requirement.

13           We attempted to be helpful, Mr. Chairman, in  
14 our objections, rather than just making blanket legal  
15 statements that they didn't meet up to what our vision  
16 was, we tried to indicate where information was available.  
17 And it has been that kind of direction that we've  
18 been encouraging Mr. Reed to attempt to use in our  
19 discussions since that time about how these contentions  
20 might be brought into conformity with what we think are  
21 the Commission's standards.

22           CHAIRMAN GLEASON: Well, there is no purpose  
23 to be served by carrying this particular dialogue further.  
24 I would simply say the Chair has not heard anything at  
25 this point that shapes the comment or conviction with  
regard to the material that has been submitted so far.

far.

1 I would, Mr. Baxter, be interested in some  
2 authority that you could reference which indicates the  
3 necessity of the Intervenor to refer to documents filed  
4 in a case.

5 I have read the Catawba decision and the Appeals  
6 Board decision in the Catawba case, and there are several  
7 references in there that refer to the availability of  
8 emergency planning reports and documents, which I think is  
9 one of the crucial problems that we have and one of the  
10 central problems that we've had in proceeding or in getting  
11 further in this proceeding than we have up to this point,  
12 and that is the time at which those documents were fur-  
13 nished to Mr. Reed.

14 I see many statements, or I see some statements  
15 from both Staff and the Applicant's comments that Mr.  
16 Reed has had them for some time. When I look as to what  
17 he has had for some time, it's far short of the implication  
18 of this kind of talk. As a matter of fact, I'm -- well,  
19 let me just leave it like that.

20 I propose we take a 15 minute recess and come  
21 back.

22 (Brief recess.)

23 CHAIRMAN GLEASON: Could we get started, please.

24 There is, apparently, pending before the Board  
25 for some action a number of motions. Mr. Reed, I believe,

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1 has a motion to compel discovery in the State, in Callaway  
 2 County. He has given notice that he intends to take a  
 3 deposition of several of the judges from two of the  
 4 counties and the Emergency Management Coordinator, or, I  
 5 guess, two judges from Callaway County and the Emergency  
 6 Management Coordinator of Callaway County.

7 We have the various motions dealing with the  
 8 specification and responses thereto of Mr. Reed's con-  
 9 tentions.

10 We have the Intervenor's motion to be relieved  
 11 from what he terms excessively burdensome and redundant  
 12 discovery requirements of the Applicant's discovery.

13 We have a request for subpoenas to the Governor  
 14 and three officials from Callaway County, I believe.

15 In the meantime, if I understand correctly,  
 16 there has been some subsequent discussion by the Applicant  
 17 and the Staff and the Intervenor regarding these conten-  
 18 tions, and perhaps we ought to have some discussion for  
 19 the record as to where that stands at the present time.

20 MR. BAXTER: Mr. Chairman, Mr. Reed and counsel for  
 21 the Staff and Applicant met in the plant area last Thurs-  
 22 day afternoon and Friday morning to discuss various matters  
 23 pending in the dispute among us, including the contentions,  
 24 discovery and schedule, and with respect to contentions the  
 25 Staff and Applicant explained further to Mr. Reed the

1 nature of our concerns about the degree of specificity  
2 needed for the contentions.

3 It's my understanding, and Mr. Reed can speak to  
4 this for himself, that we had an agreement and an under-  
5 standing that Mr. Reed would undertake in the near future  
6 to amend his contentions to attempt to provide more  
7 specificity, which I don't think would hurt the proceeding  
8 in anybody's view of what the law is, and to consolidate  
9 and perhaps even, where he feels he has been satisfied by  
10 the passage of time and the development, to eliminate  
11 certain issues, if that's appropriate.

12 There was not time to accomplish that effort by  
13 this morning, but it is my understanding it's still Mr.  
14 Reed's intention to pursue that, and it is my intention,  
15 for the Applicant, to attempt to work with him after he  
16 has made that effort to see if we can't work out a mutually  
17 agreed upon list of contentions.

18 CHAIRMAN GLEASON: Mr. Reed?

19 MR. REED: I do agree with the Staff and the Applicant  
20 that I could be more specific in delineating the problems  
21 that currently exist versus what existed at the time I  
22 submitted my final particularization.

23 I may have a problem on the amount of detail that  
24 Applicant wants, but I do agree that some increased  
25 specificity is possible and appropriate.

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We met with the Staff in Columbia here a while back and resolved the problem of Staff discovery. They permitted all discovery, and this was taken care of. Part of the Applicant's legal staff was there and participated in part --

CHAIRMAN GLEASON: Excuse me.

MR. REED: Yes, sir.

CHAIRMAN GLEASON: Who was that conference with, that discovery with?

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1 MR. REED: That was with Mr. Perlis and  
2 Mr. Goddard from the NRC Staff, and Ms. Bauser from the  
3 Applicant's -- well, from Shaw, Pittman, Potts &  
4 Trowbridge, representing the Applicant, it was there at  
5 this discovery period in Columbia, and it was my  
6 understanding, from the Staff, that the oral depositions  
7 taken resolved all of their discovery questions and that  
8 written responses to their discovery wouldn't be  
9 necessary.

10 With the Applicant, they did not hold that  
11 this discovery resolved all of their questions, and they  
12 required written response to their discovery. However,  
13 subsequently, with the potential for reducing the number  
14 of my contentions, the Applicant -- and they have every  
15 right to verify this -- has said that they will modify  
16 their discovery appropriately, so there exists right now  
17 the possibility of reducing all of this paper work  
18 considerably.

19 Now, exactly how much it is going to be reduced  
20 is something that we'll have to sit down and work out  
21 among ourselves. But there has been considerable groundwork  
22 covered since we originally submitted all of our paper  
23 work.

24 Mr. Perlis.

25 CHAIRMAN GLEASON: Mr. Perlis.

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1 MR. PERLIS: The only point I'd add is we had  
2 arrived at a tentative schedule late Friday morning, and  
3 I do apologize to the Board for trying to convey this  
4 information to them at the same time I was trying to  
5 catch a flight out of St. Louis.

6 Mr. Reed had agreed that he would be able to  
7 submit a new list of his contentions with greater  
8 specificity and combining the duplicative ones to the  
9 Applicant, I believe, by September 15th, and we then  
10 propose to take a week to examine them, possibly meet  
11 with Mr. Reed again to see whether we now agreed with the  
12 statements of his contentions or not.

13 That's all I have to add.

14 CHAIRMAN GLEASON: Where does this new effort,  
15 which, of course, the Board is glad to see, leave us with  
16 respect to existing motions before the Board?

17 MR. PERLIS: In terms of the motions, I would  
18 think that the Staff and Applicant's response to  
19 Mr. Reed's contentions could, under our agreement, be a  
20 motion to dismiss.

21 Those I would recommend to be held in abeyance  
22 until Mr. Reed does come in with his restatement, and if  
23 we and/or the Applicant agree to them, one or both of  
24 those motions could become moot.

25 In terms of all the discovery matters, the



1 Staff is satisfied with Mr. Reed's response to our  
2 discovery, and I think we should let the other parties  
3 deal with that matter, since we really have no direct  
4 interest in the discovery matters that are still before  
5 the Board.

6 CHAIRMAN GLEASON: Mr. Baxter.

7 MR. BAXTER: Yes, Mr. Chairman. Of course, all  
8 these various items -- the schedule of the discovery  
9 and contentions -- do overlap somewhat.

10 We would agree with Mr. Perlis that our  
11 objections need not be ruled upon by the Board, our  
12 objections to the proposed contentions, as long as we  
13 see the opportunity in the next few weeks to perhaps  
14 resolve some of them. That assumes that the schedule  
15 is going to be extended somewhat, and I understand we'll  
16 get to that later this morning.

17 With respect to discovery, we have a motion to  
18 compel discovery pending, and its companion piece by  
19 Mr. Reed is a motion to be relieved of the obligation  
20 responding to a discovery request. And what we have  
21 discussed within the last week was, first, to postpone  
22 his obligation to answer our discovery request until  
23 after the contentions are established.

24 We believe that it's time now to proceed in  
25 that more traditional, logical sequence than normally  
presides in these proceedings, rather than in parallel, as  
we've been doing this summer.

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1           Second, we have undertaken to review the  
2 transcript of the deposition which the NRC Staff took of  
3 Mr. Reed and compared that testimony with the  
4 interrogatories we posed, and we've given Mr. Reed a list  
5 of somewhat over 100 interrogatories that we have dropped  
6 on the basis of the testimony that was given there.

7           As to the rest of them, we feel that they should  
8 be answered at a time when the contentions are finally  
9 established, and hopefully we can get together and agree  
10 on what that remaining list is after either the Board's  
11 ruling or the parties have jointly agreed on a list of  
12 contentions.

13           So that our motion for discovery is, from our  
14 standpoint, suspended for the time being.

15           CHAIRMAN GLEASON: It seems to me that leaves --

16           MR. REED: Our motions for a subpoena. I would  
17 ask that they be held in abeyance until such time as  
18 the issues are more clearly defined or the Board can rule  
19 to dismiss them, and I will resubmit, if you will, at a  
20 later date, if I still feel that they're appropriate.

21           CHAIRMAN GLEASON: Well, I think it's fairly  
22 clear they're out of phase at the present time, because  
23 we don't really have yet before us what your -- I hesitate  
24 to use the word -- bottom line contentions are. So,  
25 therefore, there would be no way for the Board to attempt

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1 to determine the relevancy of the testimony you're  
2 attempting to elicit with respect to those contentions.

3 MR. REED: Well, as part of my contentions, I  
4 feel I face the same problem that Mr. Baxter does in the  
5 events; that is, in order to determine what some  
6 capabilities are at stake as relate to what they say  
7 they will do in their plan and what some capabilities  
8 are at the local county level, specifically, Callaway,  
9 I have a problem on accurate information, and in  
10 attempting to obtain that information through discovery  
11 I found that, in essence; I was blocked from that  
12 particular information and the only way that I could  
13 possibly come up with it would be to subpoena the  
14 individuals who are responsible in that particular area --  
15 one would be the governor and the other would be the  
16 two judges -- and to elicit this testimony at the hearing  
17 itself. And, in that case, I would be stuck with a  
18 potential surprise factor, because I wouldn't have any  
19 way to discover the facts and I would be in advance of  
20 the hearing.

21 I tried by deposition to get the information  
22 from the County Court in Callaway, but they refused to  
23 be deposed and I was left with no other alternative but  
24 to request a subpoena.

25 I could have waited until it was more timely;

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however, at the time, it seemed like the thing to do.

CHAIRMAN GLEASON: Well, I think we have to deal with this in a vacuum. If I understand it correctly, you have discussed and have general agreement with the parties on a new schedule. Perhaps we ought to go to that at this time.

It appears to me that it would be well to consider backing up a little bit, and let's start, from talking about schedule, let's start from the date of -- I don't know what we want to classify it as, but the final particularization of Mr. Reed's final action with respect to the contentions.

If I understood Mr. Perlis, he has indicated that he would have, in essence, a week from today --

MR. REED: Yesterday. I agreed that if the Applicant had committed to certain lists of equipment on the record, then I would reduce the number of -- well, I would eliminate the issues that had to do with equipment, because I feel that the particular communications equipment, et cetera, that the Applicant has offered verbally would resolve that issue in point, and, since I could then eliminate that as a contention, then I would redress those items that were left and by consolidation come up with a more meritable list.

Then I wouldn't find any difficulty in

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particularizing the special issues that had to do with each contention, because we would be talking about a reduced volume and it would become more manageable.

My date of the 15th was contingent upon the Applicant committing to that equipment within a reasonable length of time. Unfortunately, we had a three day holiday where our timing was thrown off.

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1 MR. BAXTER: That is what I was hoping to see  
2 happen, was that after Mr. Reed makes this formal  
3 distribution to the Staff and Applicant of his work  
4 product on the 15th, that there would be some brief time  
5 for us to study them and then we would come out and get  
6 together again in an attempt to work through any  
7 differences and that it could be into October before  
8 it will be ready for submittal to the Board, a joint  
9 stipulation or an announcement of failure, if that's the  
10 case. And then, we would still have the discovery  
11 process to go through somewhat with Mr. Reed before we  
12 could even begin preparing for motions for summary  
13 dispositions.

14 It was our collective judgment that that would  
15 still be a significant amount of work and could well  
16 occupy productively November and December and January  
17 from our part, getting through the discovery process  
18 and getting the motions ready for the Board. On an  
19 overall basis, we are motivated, I believe, by a desire  
20 to improve the proceeding by allowing plans and  
21 procedures to get into a more settled format, and the  
22 schedule will give all the State and local officials  
23 maximum time to prepare themselves for a hearing on  
24 whatever issues survive both the contentions and the  
25 disposition processing that actually goes to the hearing.

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1 CHAIRMAN GLEASON: I presume most of us,  
2 Mr. Baxter, that the plant delays -- which have time to  
3 do this --

4 MR. BAXTER: Absolutely. We have been given  
5 this opportunity by the unfortunate circumstance that  
6 the plan is going to be later than we have previously  
7 hoped. And we think we should take advantage of it  
8 from all sides.

9 CHAIRMAN GLEASON: Do you anticipate any further  
10 discovery with respect to the further particularization  
11 or whatever you want to call it, of Mr. Reed's contentions?

12 MR. BAXTER: I think the way it should work,  
13 because our interrogatories are -- they are rather general  
14 because they are addressed to some general statements  
15 and basically just an attempt to seek out the underlying  
16 facts. I think they will apply to the restatement as  
17 well, and some of them may not even be asked. So I would  
18 anticipate being able to just sit down and be able to go  
19 through and X out certain ones and these others there.

20 CHAIRMAN GLEASON: Mr. Perlis.

21 MR. PERLIS: I don't see any need for the  
22 Staff to take any more formal discovery. I wasn't  
23 planning on it.

24 MR. REED: I agree with Mr. Baxter. If the  
25 Applicant does indeed commit to this and we can get it

1 reduced, I don't think that additional discovery will  
2 be necessary; however, I am amicable to providing the  
3 Applicant with a second round of discovery if in the  
4 reconsolidation of some of these contentions, a new  
5 issue does arise. I wouldn't want him to be put in the  
6 position of where he couldn't ask a question. However,  
7 if it would involve tons and tons of questions, then I  
8 would object. But to reasonable discovery, no sir, I  
9 have no objection, and I don't think that it is an issue  
10 at this particular time.

11 CHAIRMAN GLEASON: I must confer for a moment.

12 (Discussion held off the record.)

13 CHAIRMAN GLEASON: It seems to the Board that  
14 we would like to see added to the schedule, the confirmed  
15 dates by which Mr. Reed has to finish his  
16 reconsideration of his specifications or his  
17 contentions, if the parties that are going to confer  
18 subsequent to that time with him would like that. Put  
19 in the record, we would like the date by which he finally  
20 has to submit those specifications to the Board and have  
21 that put into the record.

22 We would want the date by which he would have  
23 to -- we would like to be advised as to which of the  
24 interrogators -- does the Applicant still want your  
25 response to be put into the record and the period by which



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1 he has to respond. And then, that would have to be  
 2 dovetailed into the rest of the schedule. But I think  
 3 without that, we are looking really at the end of the  
 4 schedule and not to think that is going to get us up  
 5 to -- which is a little bit where we have been, not  
 6 completely but somewhat.

7 So I would suggest that we recess at this time  
 8 for lunch, take an hour and a half, whatever time is  
 9 necessary so that this matter may be discussed with  
 10 Mr. Reed and that you come back with those things worked  
 11 out, the schedule.

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I'm concerned on the basis of history in hearing this case, that the time period for which he has to respond to finish his work is too short. Nevertheless, whatever time period that he has, I think it ought to be in the record. The Board makes no comments now with respect to the rest of the scheduling. Generally, it is of course the simplest thing for the Board to do is for the parties to agree on a schedule so that it does not run into any conflicts that we can perceive, which is to conclude the scheduling. We have a larger responsibility, it seems to me, and that responsibility is to expedite these proceedings as rapidly as possible. The fact that there has been a delay of the completion of the plant itself, though it allows time to get certain things done to which we are all grateful, it still does not permit the Board or the parties just to allow unnecessary time to elapse during which these events can occur. These matters have been looked at in previous cases, but I think the standards that one has to aver to are fairly clear. And the thing that -- if I recall correctly -- it is obvious that the public interest calls for having these proceedings as rapidly as we can attain them and still be fair to all the parties concerned.

So with those comments, unless you have an objection, I would suggest that we recess and come back

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at least, say, 1:30, that will allow you time to get together with Mr. Reed and have lunch, and we will see where we go from there. Thank you.

(Whereupon a luncheon recess was taken in the above-entitled matter until 1:30 p.m. of the same day, Wednesday, September 8, 1982.)

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A F T E R N O O N      S E S S I O N

(1:30 p.m.)

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2  
3        CHAIRMAN GLEASON:    Shall we begin, please.

4                Mr. Baxter.

5        MR. BAXTER:    Mr. Chairman, the parties have conferred  
6 over the lunch recess, and I have distributed to the Board  
7 and the court reporter and the parties the results of our  
8 discussion. We essentially have two separate schedules  
9 which we think encompass a scheme which fits into the,  
10 what you would call the back end schedule, which was  
11 distributed this morning. It has two tracks to it,  
12 essentially. One track which is for contentions over  
13 which there is no dispute, and the parties have stipulated  
14 to their admission. But we have recognized in here the  
15 possibility that there will remain disputes over proposed  
16 contentions and so we have included contingency dates for  
17 the Applicant and Staff to respond to objections, if there  
18 are still disputes, for Mr. Reed to reply to those objec-  
19 tions and for a Board ruling.

20                If there are no disputes, October 1, of course,  
21 would be the essential fulfillment date from our stand-  
22 point as parties in terms of establishing the issues.  
23 The discovery schedule then tracks off of those two  
24 potential paths. Discovery could start promptly, if we  
25 have a stipulation, on October 1st, and that is what

1 is listed under Item A under discovery on disputed con-  
2 tentions. And if there are disputes over part or all of  
3 those proposed contentions, then Subpart B would govern  
4 and discovery would be postponed for some period of time  
5 while pleadings were filed and the Board ruled.

6 We could have gone on and on with the potential  
7 for disputes over objections on discovery, but it seemed  
8 to us this is far enough to go to account for contingencies.

9 In the case of those contingencies which are  
10 disputed, discovery as you can see, would take almost  
11 through Christmas time which would leave only one month  
12 for preparing summary disposition motions and the rest of  
13 the schedule proposed.

14 CHAIRMAN GLEASON: You say, Mr. Baxter, that sometime,  
15 assuming the track that has disputed contentions, that  
16 sometime, subsequent to December 1st, that we allowed  
17 ample time for a motion to compel, would that be ample  
18 time?

19 MR. BAXTER: If we had disputed contentions and in  
20 addition, if Mr. Reed filed objections on December 1st,  
21 under both tracks, whether its October 15th under A or  
22 December 1st under B, motions to compel would likely  
23 follow, and that is another, as I say, that is another  
24 entire contingency development that we did not attempt to  
25 get into. The schedule could have been unduly long for

1 everything falling down every step of the way, but that's  
2 correct. That would be the process which would ensue unless  
3 we just gave up and I doubt that we would do that.

4 (Discussion off the record.)

5 CHAIRMAN GLEASON: Mr. Baxter, if I understood you  
6 correctly, you are to continue with your ongoing effort to  
7 see whether responses that Mr. Reed has already made to  
8 the Staff's deposition or if Staff took his deposition,  
9 you are going to continue to see whether those are ade-  
10 quate to answer discovery questions which you have already  
11 asked; is that correct?

12 MR. BAXTER: No, sir. We have already completed the  
13 effort, and we have provided Mr. Reed with a list of  
14 approximately 115 of the interrogatories which we gave  
15 him and which he has ignored.

16 CHAIRMAN GLEASON: I see.  
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Keith  
7/2/1  
see.

1 Well assuming that this schedule is approved,  
2 at such time, are you going to identify the discovery  
3 questions that you want Mr. Reed to respond to? It  
4 would be helpful if you would resubmit, in the sense of  
5 forwarding again, those particular interrogatories that  
6 you want responses to rather than refer them back by  
7 some number that you have already submitted. Is that  
8 agreeable?

9 MR. BAXTER: Sure, we can do that. I think we  
10 will be able to informally identify them and resubmit  
11 them on the schedule date indicated here.

12 CHAIRMAN GLEASON: Do those schedule dates agree  
13 with you, Mr. Reed?

14 MR. REED: Yes, they do. In fact, I assisted  
15 in the instructions.

16 CHAIRMAN GLEASON: Mr. Perlis?

17 MR. PERLIS: Yes sir.

18 CHAIRMAN GLEASON: All right. The schedule  
19 looks all right to the Board. I do think that we will  
20 keep open the possibility of another prehearing  
21 conference. And in fact, we will continue this prehearing  
22 conference until that point. And it may be that if that  
23 is in the best interest of making further progress,  
24 maybe that can be called before the identification of the  
25 witnesses sometime after, of course, the Board has ruled

7/2/2  
1 on the motions for summary disposition.

2 I would like the parties to understand that we  
3 have approved the schedule, so that they should commence  
4 operating under it, I will get out an order that  
5 officially recognizes at least the significant part of it.  
6 I may not have all of it, but then again, I might. I  
7 will put into the record the schedule so it is in the  
8 record and we will issue an order within the next couple  
9 of days with respect to this.

10 Is there anything further that has to come  
11 before the Board? Prior to the or subsequent to the  
12 luncheon recess, the Board had indicated or expressed an  
13 interest to the representatives present from the  
14 Applicant, Union Electric, the desire to make a  
15 statement as to the site this afternoon. The Board has no  
16 interest other than to get a report from the area, the  
17 terrain and work that is going on at the site. If there  
18 are any representatives or if the Intervenor wishes to  
19 participate in that, they are welcome of course to  
20 do so. If not, then we can get to the hearing phase of  
21 the conference.

22 If somebody desires to go, then you can see  
23 the representative here. All right. If there is nothing  
24 further to be brought before the -- is there anything  
25 else? All right, well this prehearing conference will be



1 concluded. And hopefully, next time, we might well be  
2 closer to a hearing date. Thank you.

3 (Whereupon an adjournment was  
4 taken in the above-entitled  
5 cause.)

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300 7TH STREET, S.W., REPORTERS BUILDING, WASHINGTON, D.C. 20024 (202) 554-2345

NUCLEAR REGULATORY COMMISSION

This is to certify that the attached proceedings before the

ATOMIC SAFETY & LICENSING BOARD

in the matter of: Union Electric Company (Callaway Plant, Unit 1)

Date of Proceeding: September 8, 1982

Docket Number: STN 50-483 OL & 50-486 OL

Place of Proceeding: Jefferson City, Missouri

were held as herein appears, and that this is the original transcript thereof for the file of the Commission.

Pauline James

Official Reporter (Typed)

Pauline James / *By BH*  
Official Reporter (Signature)

COUNTY OF MONTGOMERY

*State of Missouri*

WILLARD LEVERETT  
County Clerk

OFFICE OF COUNTY CLERK  
MONTGOMERY CITY, MISSOURI  
63361

ELLEN BROWER  
Deputy County Clerk

August 5, 1982

Mr. M. A. Stiller  
Manager, Emergency Preparedness and Nuclear Safety  
Union Electric Company  
P.O. Box 620  
Fulton, Missouri 65251

Dear Mr. Stiller:

The County Court of Montgomery County, after due consideration of the contents of your letter of August 3rd, 1982, has reached the following decisions regarding that letter.

The emergency planning zone boundary as you propose is unsatisfactory. The EPZ is as follows:

Starting at the western county line and U.S. Highway 70, east to the Route N overpass; thence south on Route N to the intersection of Route J. South on Route J to the intersection of County Road 269; thence South on County Road 269 to Route K and continuing south on County Road 302 until it joins Route EE, thence continuing southerly on Route EE to US Highway 94; thence westerly on US highway 94 to the easterly city limits of Rhineland, Missouri. South on said city limits to its most southerly point, thence westerly along the southern boundary of said city limit to County Road 297; thence south on said road to a point where the road turns westerly, then continuing on a straight line south to the Missouri River (the southern county line).

The above defined EPZ has been established by this County Court and will not be changed.

Funding offers made in the above referenced letter are found to be inadequate and unsatisfactory.

The County Court, at this time, desires to go on the record as having rejected all past plans which have been presented by Union Electric Company and of refusing to accept any future plan which may be presented to this Court until all details of such plans have been resolved to the complete satisfaction of this Court and all issues of funding for the implementation of such plans meets the Court's standards and requirements.

Page 2 con't

August 5, 1982

Mr. M. A. Stiller

Fred Luekey  
Fred Luekey, Presiding Judge

Robert L. Schmidt  
Robert L. Schmidt, Associate Judge

Ernest Blaue  
Ernest Blaue, Associate Judge

Copy to:

James P. Gleason, Esq.  
Presiding Judge  
A.S.L.B.  
513 Gilmore Drive  
Silver Spring, MD. 20901

John Reed