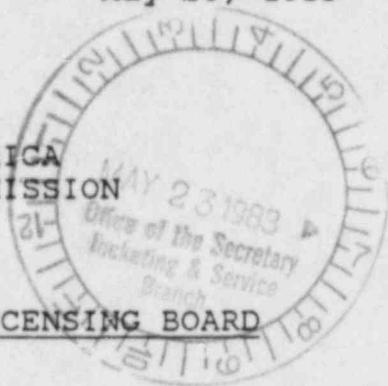


May 20, 1983

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 MOTION FOR SUMMARY DISPOSITION
OF REED CONTENTION 3
(STAFFING - EMERGENCY MANAGEMENT DIRECTOR)

Pursuant to 10 C.F.R. § 2.749, Union Electric Company ("Applicant") moves the Atomic Safety and Licensing Board for summary disposition of Contention 3 advanced by intervenor John G. Reed. As shown below, summary disposition is appropriate because there is no genuine issue of material fact to be heard with respect to Contention 3. Accordingly, Applicant is entitled to a decision in its favor on Contention 3 as a matter of law.

This Motion is supported by Applicant's Statement of Material Facts On Reed Contention 3 As To Which There Is No Genuine Issue To Be Heard (Staffing - Emergency Management

Director), Applicant's Memorandum of Law In Support Of Motions For Summary Disposition On Emergency Planning Issues ("Memorandum of Law"), the Callaway County/Fulton Radiological Emergency Response Plan ("Callaway/Fulton Plan"), the Montgomery County Radiological Emergency Response Plan ("Montgomery Plan"), the Osage County Radiological Emergency Response Plan ("Osage Plan"), the Gasconade County Radiological Emergency Response Plan ("Gasconade Plan"), the Affidavit of Tom Mitchell on Reed Contention 3 (Staffing - Emergency Management Director) ("Mitchell"), the Affidavit of Harvey Lalk on Reed Contention 3 (Staffing - Emergency Management Director) ("Lalk"), the Affidavit of Jim Crowe on Reed Contention 3 (Staffing - Emergency Management Director) ("Crowe"), and the Affidavit of Walter M. Clark on Reed Contention 1 (Staffing - Sheriff's Office) ("Clark-1"), all filed simultaneously herewith, as well as the pleadings and other papers filed by the parties in the proceeding.

I. Procedural Background

Because of its length, Reed Contention 3 is appended to this Motion as Attachment 1. In summary, Contention 3 is directed primarily at the ability of the Emergency Management Director ("EMD") of Montgomery County to fulfill the responsibilities assigned to him in the Montgomery Plan. Mr. Reed challenges the ability of the Montgomery County EMD to fulfill his assigned responsibilities while working in less than a

"full-time, professional" manner. Mr. Reed also maintains that there must be an alternate EMD in Montgomery County, he questions the ability of the Montgomery County EMD to function effectively without a secretary, and he challenges the ability of the EMD to serve as the Montgomery County Public Information Officer ("PIO") in the event of a radiological emergency at the Callaway Plant. In addition, Contention 3 summarily claims that a full-time professional EMD is essential in both Gasconade and Osage Counties.

The NRC Staff objected to Contention 3. See NRC Staff's October 25, 1982 Response to Final Particularization of Reed's Amended Contentions 1, 2 and 3 Dated October 1, 1982. The Staff's objection was overruled by the Board in its Memorandum and Order of December 7, 1982.

II. Governing Legal Standards

Section 50.47(b)(1) of the Commission's regulations on emergency planning requires that

Primary responsibilities for emergency response by the nuclear facility licensee and by State and local organizations within the Emergency Planning Zones have been assigned, the emergency responsibilities of the various supporting organizations have been specifically established, and each principal response organization has staff to respond and to augment its initial response on a continuous basis.

The criteria of NUREG-0654/FEMA-REP-1 (Rev. 1), "Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants," (Nov. 1980) ("NUREG-0654") provide no further guidance as to the application of 10 C.F.R. § 50.47(b)(1) to the issue of staffing of the office of county EMD.

III. Argument

The standards governing summary disposition motions in an NRC proceeding are set forth in Applicant's Memorandum of Law. In summary, where, as here, a properly supported motion for summary disposition is made, the party opposing the motion must come forward with substantial facts establishing that a genuine issue of fact remains to be heard. In the absence of such a showing, the movant is entitled to a decision in its favor on that contention as a matter of law.

Applying the foregoing standards to this case, it is clear that Applicant's motion for summary disposition on Reed Contention 3 should be granted. The emergency plans for each of the counties in the Callaway Plant plume exposure emergency planning zone ("EPZ") specify the functions assigned to the EMD prior to, in the event of, and following a radiological emergency at the Callaway Plant. Each of the EMD's in the three counties in which Mr. Reed argues that a full-time, professional EMD is necessary participated in the development

of their respective county plans. Each of these individuals is confident that he can fulfill the responsibilities assigned to him on a part-time basis. As to the other three Montgomery County issues raised by Mr. Reed in Contention 3, there is an alternate Montgomery County EMD, the EMD does have secretarial assistance, and there is no basis at this juncture for overturning the preference of the Montgomery County Court that the EMD also serve as the PIO.

In assessing the issue of EMD staffing, it is important to keep in mind that there are only approximately 500 people within the EPZ in Montgomery County, which is approximately 56 square miles. Mitchell, ¶ 2. Thus, while the responsibilities of the EMD are great, the degree of planning necessary to ensure a capability to evacuate and care for this small population is not as great as the effort required in Callaway County/Fulton, with its EPZ population of 15,300. See Clark-1, ¶ 5. Similarly, there are only approximately 860 people in the 72 square miles of Osage County within the EPZ, and only approximately 200 people in the 2 square miles of Gasconade County within the EPZ. Crowe, ¶ 2; Lalk, ¶ 2. The effort of each of the County EMDs is further reduced because of the concurrent development of the four parallel county plans by the counties, the State, Applicant and its consultants.

The alleged need for a full-time EMD in Montgomery, Gasconade and Osage Counties is addressed in affidavits by the

EMD's for each of these counties. In their capacity as the EMD for Montgomery, Gasconade and Osage Counties, Messrs. Mitchell, Lalk and Crowe have been working and will continue to work with their respective county government officials to ensure that they are satisfied with the radiological emergency response plan developed for the county. This is an ongoing process, involving numerous meetings with county officials, State and Federal officials, officials from the other counties in the EPZ, and with representatives from Union Electric Company. Mitchell, ¶ 3; Lalk, ¶ 3; Crowe, ¶ 3.

Mr. Tom Mitchell is the EMD for Montgomery County. He regularly works as an electrical maintenance mechanic in Montgomery County, in which he has been a resident for 37 years. Mitchell, ¶ 1.

Mr. Harvey Lalk is the EMD for Gasconade County. Mr. Lalk is retired from full-time employment. He was born and raised in Gasconade County. Mr. Lalk worked as a budget program analyst for the U.S. Government for 32 years, and returned to Gasconade County approximately 3-1/2 years ago. Lalk, ¶ 1.

Mr. Jim Crowe is the EMD for Osage County. Mr. Crowe regularly works as a Chief Deputy Sheriff in Osage County, in which he has been a resident for 35 years. Crowe, ¶ 1.

All three of the EMDs whose part-time positions are challenged by Mr. Reed in Contention 3 disagree with Mr. Reed's assessment that in their county, a full-time EMD is necessary.

Mitchell, ¶ 5; Lalk, ¶ 5; Crowe, ¶ 5. In their view, the technical expertise to which Mr. Reed refers in Contention 3 is not supposed to come from the EMD; rather, technically qualified individuals will be available to advise the county Presiding Judge from the State and from Union Electric Company. For example, the Bureau of Radiological Health is responsible for answering an EMD's questions about radiological defense. In addition, in the event of a radiological emergency at the Callaway Plant, numerous technical experts from various federal agencies will be available to assist, as needed. The EMD is responsible for the development and coordination of the county's emergency preparedness program -- an effort which precedes any emergency. In addition, during an emergency, the EMD is available to the Presiding Judge to provide assistance and advice in coordinating the emergency response effort. The specific tasks assigned to the EMD all relate to the practical aspects of implementation of the county plan. These are not technical tasks. Rather, they depend upon the individual's familiarity with the county plan, its relationship to the entire off-site emergency response effort, and the resources and unique problems of the county. Furthermore, to the extent the EMD needs to be familiar with any technical matters, he will receive specific training in these areas from the State of Missouri, supplemented as needed by Union Electric Company. Mitchell, ¶ 5; Lalk, ¶ 5, Crowe, ¶ 5.

Mr. Mitchell estimates that it has taken 20 hours of work each week over the past 1-1/2 years for him to resolve the many issues involved in county radiological emergency preparedness. Mitchell, ¶ 6. Mr. Mitchell expects approximately the same part-time demand on his time to continue, except, of course, during an emergency. Id. Mr. Lalk believes that it will take approximately 10 to 20 hours of work each week to resolve the many issues involved in all types of county emergency preparedness (e.g., floods, tornadoes), of which radiological preparedness is one part. Lalk, ¶ 6. Once the plans are signed, Mr. Lalk expects less of his time to be required to keep the plans current and resolve any issues which arise from time to time. Mr. Crowe estimates that it has taken 10 hours of work each week over the past 5 years to resolve the many issues involved in county emergency preparedness of which radiological is one part. Once the plans are signed, he expects less of his time to be required to keep the Osage Plan current and resolve any issues which arise from time to time. Crowe, ¶ 6.

All three of the EMDs believe that they are capable of serving as their respective county EMD while holding this position on a part-time basis. Mitchell, ¶ 7; Lalk, ¶ 7; Crowe, ¶ 7. While they have been very busy at times over their tenure as EMD, they have been able and will continue to be able to provide assistance to the County Court with respect to

radiological emergency matters. This is a civic responsibility which Messrs. Mitchell, Lalk and Crowe proudly fulfill.

Mitchell, ¶ 7; Lalk, ¶ 7, Crowe, ¶ 7.

In summary, all three of the EMDs in question, who have first hand knowledge of the demands that have been placed on their time in formulating the county plans and are in the best position to estimate the future demands on their time, believe that the job is a part-time, not a full-time position, which they can and are proud to hold.

With respect to Reed Contention 3.A, Montgomery County has identified Mr. Vincent Eldringhoff as the alternate EMD. Mitchell, ¶ 8. As is the case with respect to all such specifics, this fact will be reflected in the appropriate Montgomery Plan implementing procedure.

With respect to the Montgomery County EMD's need for secretarial assistance, Mr. Mitchell has testified that he has been able to obtain assistance to date. Mitchell, ¶ 9. More fundamentally, however, Applicant seriously questions the appropriateness of litigating such an issue in a proceeding directed at health and safety issues and, particularly, at the question of whether emergency plans express the "overall concept of operation" and describe the "essential elements of advance planning." 10 C.F.R. Part 50, Appendix E, Section III; Cincinnati Gas & Electric Company, et al. (Wm. H. Zimmer Nuclear Power Station, Unit No. 1), ALAB-727, 17 N.R.C. _____,

slip op. at 15 (May 2, 1983); see also Southern California Edison Company, et al. (San Onofre Nuclear Generating Station, Units 2 and 3), ALAB-717, 17 N.R.C. ____, slip op. at 66, n.57 (March 4, 1983). Surely whether the Montgomery County EMD needs additional secretarial support is a minor matter that at the very most "may be 'left for the Staff to resolve following the hearing'." San Onofre, supra, slip op. at 66, n.57, citing the Licensing Board decision below, LBP-82-39, 15 N.R.C. 1163, 1216 (1982) and Consolidated Edison Co. of New York (Indian Point Station, Unit 2), CLI-74-23, 7 A.E.C. 947, 951-52 (1974).

Finally, with respect to the issue raised by Mr. Reed in Contention 3.C, the Montgomery County Court is of the view that the PIO should be the EMD because the EMD will be in the best position to know what is going on and, accordingly, will be able to provide the best information to the public. Mitchell, ¶ 10. The Montgomery County PIO is only one of numerous public information officers who will be addressing concerns raised by the public in the event of a radiological emergency at the Callaway Plant. The Montgomery County PIO is intended to focus uniquely on information needed by Montgomery County residents. It is not the job of the Montgomery County PIO to brief the public generally about events at the Callaway Plant. It is the preference of the Montgomery County Court that the PIO remain the EMD at least through the first full-scale exercise which will precede operation of the Callaway Plant above 5% power.

In the event the exercise establishes that the EMD will be overloaded if he assumes the responsibilities of the PIO, the County Court will reassign the duties of the PIO to another individual. Id.

In view of the Montgomery County Court's clear preference that the EMD serve as the PIO, Mr. Reed's opinion to the contrary does not constitute a reasonable basis for challenging the Court's view on this subject.1/

IV. Conclusion

There is no material basis for requiring that the EMDs in Montgomery, Gasconade and Osage Counties work on a full-time basis. Nor is there any material basis for requiring that Montgomery County hire a secretary for its EMD or designate an individual besides the EMD as the PIO. Accordingly, because

1/ See Applicant's motion on Contention 14 and its discussion of the basis for NRC deference to local emergency planners' allocation of response assignments.

there is no genuine issue of material fact in dispute among the parties with respect to Contention 3, Applicant's Motion for summary disposition should be granted.

Respectfully submitted,

SHAW, PITTMAN, POTTS & TROWBRIDGE

Thomas A. Baxter

Thomas A. Baxter, P.C.
Deborah B. Bauser

Counsel for Applicant

1800 M Street, N.W.
Washington, D.C. 20036

(202) 822-1000

May 20, 1983

#3. STAFFING - EMERGENCY MANAGEMENT DIRECTOR

The Montgomery County Emergency Management Director is an unpaid volunteer (as is the Director of EMA in Gasconade and Osage county). This job involves the development of a coordinated emergency preparedness program, development and scheduling of radiological emergency response training, maintenance of training schedules, attendance rosters and lesson plans, incorporation of changes to Off-site Plan and SOP prior to the existence of an emergency condition. During a radiological emergency, the Director, EMA is called upon to activate the EOC (pg. 2-2, SOP), assure the installation and operation of special equipment or services (SOP, pg. 2-2), procure food and beverage for EOC staff and others (SOP, pg. 2-5), notify support agencies of emergency (SOP, pg. 4-14), provide notice of siren activation (SOP, p. 5-4), cooperate with other agencies to minimize the radiation health hazard (Off-site Plan, pg. 12-2), provides assistance and advice to the Presiding Judge in coordinating emergency response (Off-site Plan, pg. C-1). Additional duties during pre-emergency periods include the planning, scheduling and coordinating drills and exercises involving radiological emergency scenarios (Off-site Plan, pg. 13-1 and Mont. SOP, pg. 16-1), storage and accountability of radiological monitor equipment (SOP, pg. 18-1), development of procedures to ensure establishment and operation of Reception and Care Center (SOP, pg. 19-1), coordination of

training of agencies in operations of reception and Care Centers (SOP, pg. 19-1), issuance of radiological monitor equipment (SOP, pg. 20-2), and during emergency, receive and report to State EMA radiological readings above normal background (SOP, pg. 20-3). In order to perform the above duties in an acceptable manner, the Emergency Management Director must have technical expertise in areas of radiological defense, personnel management, planning and operations, administration, training and instruction, and have a complete understanding of every aspect of the emergency operations procedures in order to advise the Presiding Judge of actions needed during the emergency. Additionally, this man must be in the EOC at all times in order to be kept abreast of changes in the field operations within the EPZ. Lack of knowledge of a change in a situation could result in misdirection of effort and disruption of a valid operation which may be underway. A full-time, professional EMA Director is essential to Montgomery (Gasconade and Osage counties, also) County if a Director of Emergency Management is expected to develop the required technical expertise and field qualifications outlined in the Off-site Plan and SOP. A part-time Director has no incentive to acquire such talents or maintain suitable standards of administration and training as is required in the proposed Off-site Plan or SOP.

A. The Montgomery County Emergency Management Director has no alternate or assistant. To expect him to operate on a 24 hour a day basis, without relief, will reduce his

2
judgment and efficiency thereby adversely affecting his effectiveness. A minimum of 1 alternate director, and preferably 2, is considered essential to effective operations of this office under emergency conditions.

B. During pre-emergency operations, unless the Director has administrative abilities and can type, a secretary or part-time secretary will be essential to the Emergency Management Agencies daily operations.

C. The Montgomery County Emergency Management Director has been assigned the added duties of Public Information Officer (SOP, pg. 1-9). This job, during the pre-emergency period, may be assumed by this Director, but during an actual emergency, the two functions conflict and the job of PIO calls for meetings with media, preparation of news releases and possible absence from the EOC. This situation places an excessive work load on the Emergency Management Director and must be changed.