

# Advisory Council On Historic Preservation

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The Old Post Office Building  
1100 Pennsylvania Avenue, NW #809  
Washington, DC 20004

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JUL 22 1988

Mr. Kenneth E. Perkins, Director  
Project Directorate III-3  
Division of Reactor Projects - III,  
IV, V and Special Projects  
Nuclear Regulatory Commission  
Mail Station Pl-137  
Washington, DC 20555

Attn: Tom Alexion

Dear Mr. Perkins:

As requested by Tom Alexion of your staff, we have briefly reviewed the package of material you sent to the Keeper of the National Register of Historic Places on April 18, 1988 regarding Union Electric Company's Callaway Plant (Docket No. 50-483). We have also discussed this matter with Mr. Michael Weichman of the Missouri State Historic Preservation Officer's staff. As a result, we have some observations and recommendations.

As we understand it, the Callaway Plant was approved for construction without compliance with Section 106 of the National Historic Preservation Act and our implementing regulations (36 CFR Part 800), but such compliance was initiated before the Plant was licensed to operate. Prior to licensing, the entire project area was surveyed to identify historic properties, and 129 such properties were identified. A "cultural resources management plan" was then developed, which specifies how each such property will be treated; the plan also suggests that 25 of the properties are eligible for inclusion in the National Register of Historic Places, while the other 104 are not considered eligible.

Questions have continued to exist about the purported ineligibility of the 104 properties, but particular attention has focused on three properties -- apparently the only three that may actually be threatened with damage from operations and maintenance activities. The Plant was licensed for operation subject to conditions requiring that the eligibility of the three properties (23CY20, 532, and 359) be formally determined and that

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our regulations be complied with to ensure that the properties, if eligible, were appropriately treated. While this sort of provision for post-facto review is inconsistent with both Section 106 and the regulations, apparently no objection was raised to it at the time the license was issued.

The three historic properties were subjected to testing, resulting in a conclusion by Union Electric's contractor that they are eligible for inclusion in the National Register. The State Historic Preservation Officer (SHPO), while not disagreeing with this conclusion, raised a number of questions and requested additional documentation. Much of the requested information was provided, and you then forwarded the entire package to the Keeper of the National Register for a formal determination of eligibility. We understand that questions remain as to whether the documentation is adequate.

It seems to us that the focus of attention is wrong, and that it is of limited utility to quibble about whether documentation on the three properties is adequate. Apparently all involved have proceeded under the assumption that the properties had to be formally nominated to, or at least formally determined eligible for inclusion in, the National Register. In fact, however, nomination has never been required as a basis for NRC's compliance with Section 106, and formal determination of eligibility has not been required since the Council suspended portions of its then-current regulations in 1982. Under our current regulations, a copy of which is enclosed for your reference, if a Federal agency and SHPO agree that a property is eligible, it can be treated as such for purposes of Section 106 review. Accordingly, there is no regulatory requirement that a final determination be sought from or rendered by the Keeper of the Register, provided that both NRC and the SHPO concur in the determination of Union Electric's contractor that the properties in question are eligible (See 36 CFR §800.4(c)(2)).

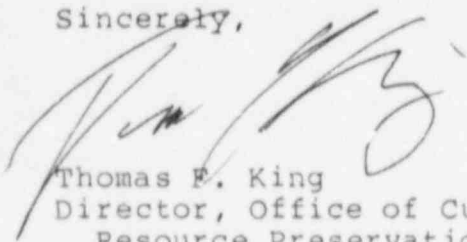
What is required under our regulations, as well as by Union Electric's license as we understand it, is that if eligible properties are subject to effect by the project, consultation occur to arrive, if possible, at agreement about what steps will be taken to avoid or reduce adverse effects. Apparently at least the three sites that have been the subject of testing are subject to effect from operation and maintenance of the Plant, though Union Electric believes that the effect will not be adverse. It appears that the other 22 properties regarded as eligible are not subject to effect, at least at present, while the properties that Union Electric's contractor regards as ineligible will, according to the "cultural resources management plan," be protected from serious disturbance as well.

We suggest that, rather than continuing to worry about precisely what documentation to submit to whom for a formal determination of eligibility, NRC simply propose to the SHPO that all the properties identified as such by Union Electric are eligible for inclusion in the National Register. If the SHPO concurs, as we

expect he will, then we can move on to the next step in the process: consultation to resolve effects. It appears that the "cultural resources management plan" provides a good starting point for this consultation. We assume that Union Electric has been implementing the plan's recommendations; a logical step toward reaching agreement about resolving effects would seem to be for NRC and the SHPO to determine, in consultation with Union Electric, how well the plan is working both in terms of protecting historic properties and in terms of facilitating Union Electric's operations. If the plan is working effectively, we should be able to reach agreement in short order on ways to ensure that it continues to do so. If there are problems, consultation could address whatever adjustments need to be made. This would appear to us to be a far more fruitful approach to the matter than to continue to worry about the information necessary to make formal nominations to the National Register.

I hope these suggestions are of use to you. When NRC is ready to proceed with Section 106 review of this project, please contact Mr. Don Klima, Chief of our Eastern Division of Project Review, at this address.

Sincerely,



Thomas F. King  
Director, Office of Cultural  
Resource Preservation

Enclosure