RAS 10445

September 6, 2005

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USNRC

September 6, 2005 (9:51am)

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

In the Matter of	)	
	)	
Nuclear Management Company, *et al.*	)	Docket No. 50-255-LR
	)	ASLBP No. 05-842-03-LR
(Palisades Nuclear Plant)	)	

NUCLEAR MANAGEMENT COMPANY'S RESPONSE OPPOSING PETITIONERS' MOTION FOR RESCHEDULING

Nuclear Management Company ("NMC") hereby answers and opposes Petitioners' Response to ASLB Order Regarding Schedule and Guidance for Proceedings/Motions for Rescheduling of Critical Dates (Sept. 2, 2005) (hereinafter referred to as "Petitioners' Motion"), to the extent it moves to extend the deadline for Petitioners' reply and proposes rescheduling a prehearing conference until late October or November. NMC submits that Petitioners have shown no good cause to extend the deadline for their reply, and that, given Petitioners' inability to support a reasonable schedule, the Board should rule on the pleadings without a prehearing conference.

Petitioners have the resources of five organizations and are represented by two attorneys, as well as five other individuals who have entered appearances in this proceeding. Nevertheless, Petitioners state that they are unable to participate in the conference call scheduled for September 6, move for an extension tripling the period allowed for their reply, and propose that the prehearing conference currently scheduled for September 13 be rescheduled for late October or November. This is an inauspicious start to this proceeding

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Under the NRC's rules at 10 C.F.R. § 2.309(h)(2) and the Atomic Safety and Licensing Board's Order of August 31, 2005 ("Order"), Petitioners' reply to the answers[1] to Petitioners' hearing request[2] is due within 7 days. The Commission has decided that seven days is a reasonable period for a reply, which should be narrowly focused on the legal or logical arguments presented in the answers. 69 Fed. Reg. 2,182, 2,203 (Jan. 14. 2004).

Parties to a proceeding are expected to adhere to the time frames specified in the NRC's Rules of Practice and in the scheduling orders in the proceeding. Statement of Policy on Conduct of Adjudicatory Proceedings, CLI-98-12, 48 N.R.C. 18, 21 (1998). While licensing boards may grant extensions of time for good cause (10 C.F.R. § 2.307(a)), it is the Commission's policy that extensions should be granted only when warranted by unavoidable and extreme circumstances Id. Granting exemptions only when warranted by unavoidable and extreme circumstances strikes an appropriate balance between avoiding delay and ensuring reasonable time frames for taking actions in adjudications. 69 Fed. Reg. at 2,186.

The Commission has explained that limiting extensions of time to situations involving unavoidable and extreme circumstances gives content to the general "good cause" standard. Baltimore Gas & Electric Co. (Calvert Cliffs Nuclear Power Plant, Units 1 and 2), CLI-98-15, 48 N.R.C. 45, 53 & n.5 (1998). In other words, "ordinarily only 'unavoidable and extreme circumstances' provide sufficient cause to extend filing deadlines." Hydro Resources, Inc. (2929 Coors Road Suite 101, Albuquerque, NM 87120), CLI-99-1, 49 N.R.C. 1, 3 n.2 (1999).

> [O]ur construction of "good cause" to require a showing of "unavoidable and extreme circumstances" constitutes a reasonable means of avoiding undue delay in this important license renewal proceeding, and for assuring that the proceeding is adjudicated promptly, consistent with the goals set forth in the Policy Statement and the [Administrative Procedure Act].

[1] Nuclear Management Company's Answer to the August 8, 2005 Request for Hearing and Petition to Intervene (Sept. 2, 2005); NRC Staff Answer Opposing Petition to Intervene and Request for Hearing (Sept. 2, 2005) (hereinafter collectively referred to as the "Answers").

[2] Request for Hearing and Petition to Intervene (Aug,. 8, 2005).

Baltimore Gas & Electric Co. (Calvert Cliffs Nuclear Power Plant, Units 1 and 2), CLI-98-25, 48 N.R.C. 325, 342 (1998), aff'd sub nom., National Whistleblowers Ctr. v. NRC, 208 F.3d 256, 258 (D.C. Cir. 2000), cert. denied, 531 U.S. 1070 (2001) (footnote omitted).

Petitioners have not shown that their requested extension is warranted by unavoidable and extreme circumstances. Certainly, Petitioners' assertion that the extra weeks are needed "to coordinate the preparation of a meaningful response with geographically far flung clients" does not establish good cause under any construction of that standard. With the exception of the Nuclear Information and Resource Service, the organizations comprising the Petitioners are all Michigan groups with representatives in the region of the Palisades Plant. While one of the attorneys representing the Petitioners is from Ohio, retaining counsel from another state is Petitioners' choice, not an unavoidable circumstance. In any event, in the current era of electronic communication, draft pleadings can easily be shared by electronic mail.

In essence, Petitioners are claiming that they need more time because they have too many participants, but that is also their choice, and not an unavoidable or extreme circumstance. If Petitioners could obtain extensions of the Commission's deadlines simply by joining together, or by retaining counsel from another state, those deadlines would be meaningless.

Similarly, Petitioners' characterization of the Answers as "voluminous" does not provide good cause. The length of the Answers is not unusual and simply reflects the number of contentions that Petitioners chose to plead. If Petitioners have chosen to raise more issues than they can support, that is a situation entirely of their making. "[A] person who invokes the right to participate in an NRC proceeding also voluntarily accepts the obligations attendant upon such participation." Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), CLI-83-19, 17 N.R.C. 1041, 1048 (1983) (citation omitted). "Fairness to all involved in NRC adjudicatory procedures requires that every participant fulfill the obligations imposed by and in accordance with

applicable law and Commission regulations." Statement of Policy on Conduct of Licensing Proceedings, CLI-81-8, 13 N.R.C. 452, 454 (1981).

Moreover, Petitioners are represented by two attorneys and five other representatives. Therefore, there is no apparent reason why they cannot reply to arguments on their twelve contentions within the normal time frame.

NMC also opposes rescheduling the prehearing conference until late October or November. Applicants are entitled to a prompt resolution of disputes concerning their applications. Statement of Policy on Conduct of Adjudicatory Proceedings, CLI-98-12, 48 N.R.C. at 19. The NRC's rules call for the Licensing Board to issue a decision within 45 days after the answers and replies, absent an extension from the Commission. 10 C.F.R. § 2.309(i). Petitioners' request for added weeks is inconsistent with this requirement. Further, when the Commission amended the Rules of Practice in 2004, it provided an opportunity for a petitioner to submit a written reply and eliminated the requirement of an initial prehearing conference.[3] Since Petitioners are unable to accommodate a reasonable schedule, and because there is no apparent need for a prehearing conference, NMC respectfully submits that the Licensing Board should forego holding a conference and rule on the basis of the arguments set forth in the pleadings.

NMC is available for a telephone conference on any day in September except September 19. As discussed above, NMC does not believe that there is a need for oral argument on the contentions. If the Board nevertheless decides to reschedule a conference to hear oral argument, NMC would be available on any day in September other than the 19th, any day in October other than the 6th, and any day in November. However, any rescheduled conference should be conducted in a time frame that allows the Licensing Board to issue a decision on Petitioners'

[3] Compare 10 C.F.R. § 2.309 (which does not require a prehearing conference) with former 10 C.F.R. § 2.714(b)(1) (which required contentions to be filed before the first prehearing conference).

hearing request by October 24 (45 days from September 9, when Petitioners' Reply is due), as required by 10 C.F.R. § 2.309(i).

For all of the foregoing reasons, Petitioners' motion to extend the due date for their reply should be denied, and a conference for argument on the contentions should either be eliminated or rescheduled for a date that allows a decision by October 24th.

Respectfully Submitted,

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Dated: September 6, 2005

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CERTIFICATE OF SERVICE

I hereby certify that copies of "Nuclear Management Company's Response Opposing Petitioners' Motion for Rescheduling," dated September 6, 2005, were served on the persons listed below by deposit in the U.S. Mail, first class, postage prepaid, and where indicated by an asterisk by electronic mail, this 6th day of September 2005.

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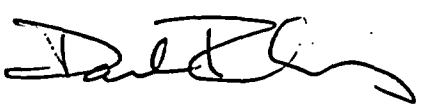

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