

March 6, 2009

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

Before the Commission

In the Matter of)	
)	
Union Electric Company)	Docket No. 52-037 COL
d/b/a AmerenUE)	
)	
(Callaway Plant, Unit 2))	
)	
)	

**APPLICANT’S ANSWER OPPOSING
MISSOURI COALITION FOR THE ENVIRONMENT’S MOTION FOR EXTENSION**

I. Introduction

On February 4, 2009, the Nuclear Regulatory Commission (“NRC”) published its “Notice of Hearing and Opportunity to Petition for Leave to Intervene and Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information and Safeguards Information for Contention Preparation on a Combined License for the Callaway Plant Unit 2,” 74 Fed. Reg. 6064 (“Notice of Hearing”). The Notice provided that a potential party to the Combined License proceeding, within 10 days after publication of the Notice, could request access to sensitive unclassified non-safeguards information (“SUNSI”) or safeguards information (“SGI”). On February 12, 2009, the Missouri Coalition for the Environment (“Coalition”) filed an “Objection and Request for Extension regarding non-public portions of COLA” (“Request”).¹ The Request seeks either that the NRC rescind the requirement to request access to SUNSI or SGI within the 10 day period, or, alternatively, a 30 day extension beyond the initial 10 day

¹ Contrary to NRC regulations and the Notice of Hearing, the Coalition did not serve the Request on counsel for AmerenUE and did not serve it via the NRC’s electronic filing system. The NRC Office of the Secretary served the Request on AmerenUE on February 26, 2009; therefore, this response is timely.

period within which to request access to SUNSI or SGI. Union Electric Company d/b/a AmerenUE (“AmerenUE” or “Applicant”), hereby answers and opposes the Request.

AmerenUE filed the Combined License Application (“COLA”) for Callaway Unit 2 in July 2008. The Coalition has been aware of the COLA and this proceeding at least since July 2008 and has had ample time to prepare to participate in this proceeding. The Request is unjustified and should therefore be denied.

II. Background

On July 9, 2008, the NRC held an open house and conducted a public meeting in Fulton, Missouri to discuss the review process for the COLA which AmerenUE would file that month. *NRC Meeting July 9 in Fulton, Mo., to Discuss Review Process for Expected New Reactor Application*, Press Release No. 08-117, June 23, 2008 (available at ADAMS Accession No. ML081750296). On July 24, 2008, AmerenUE filed the COLA for Callaway Plant Unit 2 (transmittal letter available at ADAMS No. ML082140639). On September 19, 2008, the NRC issued a press release announcing the availability of the COLA on its website. *Callaway Application for New Reactor Available on NRC Website*, Press Release No. 08-175, (available at ADAMS Accession No. ML082630512). This press release stated that proprietary and security information was withheld. On October 9, 2008, the NRC published notice in the Federal Register that the Callaway COLA was available for review. 73 Fed. Reg. 59,677 (Oct. 9, 2008)². On December 18, 2008, following completion of the NRC’s sufficiency review and determination that the COLA was acceptable for docketing, the NRC published in the Federal Register a Notice of Acceptance for Docketing of an Application for Combined License for Callaway Plant Unit 2. 73 Fed. Reg. 77,078 (Dec. 18, 2008). On February 4, 2009, the NRC

² A correction to the October 9, 2008 notice was published in the Federal Register on October 16, 2008. 73 Fed. Reg. 61,444.

published the Notice of Hearing and Opportunity to Petition for Leave to Intervene, explaining how to obtain access to SUNSI and SGI. 74 Fed. Reg. 6064 (Feb. 4, 2009).

III. Discussion

As is evident from the NRC notices discussed above, the COLA for Callaway Plant Unit 2 has been available for more than six months. Thus, the Coalition has had ample opportunity to review the COLA and related documents to prepare to participate in this proceeding.³

Contrary to the Coalition's assertion, the NRC's procedures for access to SUNSI and SGI provide a reasonable process to gain access to that information. The Coalition provides no good cause to deviate from the procedures and schedules established in the Notice of Hearing. In accordance with the Notice of Hearing, a potential party seeking access to that information in order to respond to the Notice of Hearing was required only to file a request for such access within 10 days of publication of the Notice of Hearing, and to provide certain background information in order to allow the NRC staff to evaluate the request.⁴ Furthermore, the Order provides for an extension beyond the 10 days if good cause is shown. 74 Fed. Reg. at 6065. The

³ In addition to the public notice discussed above, the Coalition and its counsel have in fact been fully aware of this proceeding for over eight months. A representative of the Coalition was quoted in the press as early as June 2008, discussing Callaway Plant Unit 2, "[o]n the other side of the issue, Kay Drey from the Missouri Coalition for the Environment said the law was the best way to prevent customers from paying for new plants that may never exist. 'If there are delays or mistakes or a decision not to make the plant, we shouldn't have to pay until it is used for service,' she said." *Fulton Sun*, June 17, 2008. The Coalition's counsel was also quoted in the press as early as June 2008 on the Callaway Plant Unit 2. "Henry Robertson, a lawyer at Great Rivers Environmental Law Center, has been tracking the project. The energy lawyer said the utility could face zoning or other local issues if it attempts to build a new power plant." *The Daily Record and Kansas City Daily News-Press*, June 16, 2008. Nor is the Coalition a stranger to NRC proceedings and Callaway, having intervened in opposition to the operating license for Callaway Plant Unit 1. See, e.g., *Union Electric Company* (Callaway Plant, Unit 1), LBP-82-109, 16 N.R.C. 1826, 1827 (1982) (Kay Drey identified as representing joint intervenors, including Coalition for the Environment)..

⁴ If the request is granted, the order provides for a presiding officer to issue a protective order, and allows the potential party 25 days from the date of access to the requested information to file proposed contentions related to that information. The order provides a table of milestones concerning the timing of the steps required of the potential party (and others). 74 Fed. Reg. at 6067.

existence of the process outlined in the Order undercuts the Coalition's argument case for a general extension.

As for any attempt to show good cause, the Coalition states that it needs additional time to retain experts and "peruse" the COLA. Request at 1. The effort about which the Coalition complains simply reflects the normal and reasonable demands expected of persons who wish to participate in licensing proceedings. Given the period of time – in excess of six months – during which the Coalition has had to "peruse" the COLA and to "finalize an agreement with any expert," the Coalition has not met its burden of demonstrating good cause for an extension.

Potential petitioners in another COL proceeding made a similar request. The Commission found no merit in that request. "The Commission remains convinced that ten days from the publication of the Federal Register notice is a reasonable amount of time to request access to SUNSI or SGI, given the public availability of applications well before the ten-day period starts and the relatively minimal effort necessary to file a request for SUNSI or SGI." *Detroit Edison Co. (Fermi Unit 3)*, CLI-09-02, 69 N.R.C. ____, slip op. at 5 (Feb. 17, 2009).⁵

The NRC has given potential petitioners in this proceeding more than six months to review the COLA and prepare any hearing request. We believe that the NRC has clearly made the hearing opportunity fair and meaningful. Having done so, consistent with its *Statement of Policy on Conduct of Adjudicatory Proceedings*, the NRC should recognize that "applicants for a license are also entitled to a prompt resolution of disputes concerning their applications." CLI-

⁵ While in *Fermi*, the Commission in its discretion provided an additional ten days, potential petitioners in that case raised other issues, such as a request for funding, a fee waiver request, and a request relating to COLA redactions, that the Commission relied upon to exercise its discretion. *Fermi*, CLI-09-02, slip op. at 5. The Coalition however in this case raises no such extra-procedural issues. The Commission in *Fermi* also stated that it "sill not so readily excuse non-compliance with the ten-day deadline in future proceedings." Id. at 5-6.

98-12, 48 N.R.C. at 18, 19 (1998). Accordingly, the Commission should enforce its schedule and deny the Coalition's request.⁶

IV. Conclusion

For all of the foregoing reasons, the Coalition's Request should be denied.

Respectfully submitted,

/Executed in Accord with 10 C.F.R § 2.304(d)/

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March 6, 2008

⁶ The Request should also be denied for failure to observe the NRC's procedural requirements for such submissions. The request fails to satisfy the NRC's requirements for filings in adjudicatory dockets. The letter was not filed using the NRC's Electronic Information Exchange nor was it sent to AmerenUE's counsel as required by NRC regulations or the hearing notice. See 10 C.F.R. § 2.305; 74 Fed. Reg. at 6064. Moreover, to the extent that the requests are intended to constitute a motion, the Potential Petitioner failed to comply with the requirements in 10 C.F.R. § 2.323. Thus, the Request is procedurally deficient and should be denied on these grounds as well.

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CERTIFICATE OF SERVICE

I hereby certify that copies of “Applicant’s Answer Opposing Missouri Coalition for the Environment’s Motion For Extension” were provided to the Electronic Information Exchange for service to those individuals on the service list in this proceeding, this 6th day of March 2009.

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