

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD PANEL

Before the Licensing Board:

G. Paul Bollwerk, III, Chairman  
Dr. Richard F. Cole  
Dr. Jeffrey D. E. Jeffries

In the Matter of

AMERENUE

(Callaway Plant Unit 2)

Docket No. 52-037-COL

ASLBP No. 09-884-07-COL-BD01

April 27, 2009

MEMORANDUM AND ORDER  
(Initial Prehearing Order)

In the above-captioned proceeding, AmerenUE (AUE) has applied under 10 C.F.R. Part 52 for a combined license (COL) for authorization to construct and operate a new nuclear power reactor utilizing the U.S. Evolutionary Power Reactor (EPR) design at the site in Callaway County, Missouri, currently associated with its Callaway Plant Unit 1. In this proceeding, two separate hearing requests dated April 6, 2009, challenging the AUE COL application (COLA) have been filed, one jointly by petitioners Missouri Coalition for the Environment and Missourians for Safe Energy (MCE/MSE) and one by petitioner Missourians Against Higher Utility Rates (MAHUR). Also, by submissions bearing that same date, two governmental entities, the Public Service Commission of the State of Missouri (PSCM) and the Missouri Office of the Public Counsel (MPC), have requested they be granted discretionary intervention pursuant to 10 C.F.R. § 2.309(e), with the former also seeking leave to participate as an interested governmental entity in accordance with section 2.315(c). By memorandum dated April 24, 2009, the Secretary of the Commission referred these petitions to the Chief

Administrative Judge who, in turn, assigned these petitions to this Licensing Board for adjudication.

Relative to the conduct of this proceeding, the following directives shall apply:

#### I. DESIGNATION OF CONTENTIONS

In their April 6 petition, pursuant to 10 C.F.R. § 2.309(f), MCE/MSE submitted several contentions contesting the AUE COLA for Callaway Unit 2. They labeled these contentions using a numeric designation. Additionally, with its petition MAHUR proffered one unnumbered contention. Consistent with the agency's general approach to contentions, under which each of these issue statements must focus, in the first instance, on the application and other information available at the time a hearing petition is submitted, see 10 C.F.R. § 2.309(f)(2), to aid the Licensing Board and the other participants in identifying their concerns, on or before Wednesday, April 29, 2009,<sup>1</sup> MCE/MSE and MAHUR shall provide a supplement to their petitions that for each of their already-specified contentions assigns a separate numeric or alpha designation within one of the following groups:

1. General, Administrative and Financial Information (G/A/FI) -- primarily concerns issues relating to matters discussed or referenced in the G/A/FI portion (Part 1) of the COLA at issue in the proceeding, or matters a petitioner asserts should be discussed in the G/A/FI portion of the COLA.

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<sup>1</sup> The time provided for generating this supplement is short, owing to the timing of the Commission referral of this matter to the Licensing Board Panel and the need to have this information available so that AUE and the staff can properly reference these contentions in their answers. Given the essentially ministerial task involved, we are confident it can be carried out in the time provided. If, however, these petitioners believe they require additional time, after consulting with the applicant and the staff per section II.C below, they should advise the Board by the April 29 filing due date as to how much additional time they believe they need, with the understanding that this may engender an extension of time for the filing of the applicant and staff answers.

2. Final Safety Analysis Report (SAFETY) -- primarily concerns issues relating to safety or technical matters discussed or referenced in the FSAR portion (Part 2) of the COLA at issue in the proceeding, or matters a petitioner asserts should be discussed in the FSAR portion of the COLA.
3. Environmental Report (NEPA) -- primarily concerns issues relating to matters discussed or referenced in the Environmental Report (ER) portion (Part 3) of the COLA at issue in the proceeding, or matters a petitioner asserts should be discussed in the ER portion of the COLA.
4. Technical Specifications (TS) -- primarily concerns issues relating to matters discussed or referenced in the TS portion (Part 4) of the COLA at issue in this proceeding, or matters a petitioner asserts should be discussed in the TS portion of the COLA.
5. Emergency Plan (EP) -- primarily concerns issues relating to matters discussed or referenced in the EP portion (Part 5) of the COLA at issue in this proceeding, or matters a petitioner asserts should be discussed in the EP portion of the COLA.
6. Departures and Exemption Requests (D/ER) -- primarily concerns issues relating to matters discussed or referenced in the D/ER portion (Part 7) of the COLA at issue in this proceeding, or matters a petitioner asserts should be discussed in the D/ER portion of the COLA.
7. Proposed License Conditions, including Inspection, Tests, Analyses and Acceptance Criteria (LC/ITAAC) -- primarily concerns issues relating to matters discussed or referenced in the LC/ITAAC portion (Part 10) of the COLA at issue in this proceeding, or matters a petitioner asserts should be discussed in the LC/ITAAC portion of the COLA.
8. Enclosures (ENC) -- primarily concerns issues relating to matters discussed or referenced in the ENC portion (Part 11) of the COLA at issue in this proceeding, or matters a petitioner asserts should be discussed in the ENC portion of the COLA.
9. Miscellaneous (MISC) -- does not fall into one of the categories outlined above.<sup>2</sup>

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<sup>2</sup> We note that the portion of the COLA (Section 6) that would deal with a limited work authorization (LWA) is not implicated in this instance because an LWA apparently has not been sought. Additionally, there are also two other COLA sections, one containing proprietary and other information relevant to the COLA (Part 9), and one containing the Security Plan (Part 8),  
(continued...)

If MCE/MSE or MAHUR believes a contention raises issues that cannot be classified as primarily falling into only one of these categories, it must set forth the contention and supporting bases in full separately for each category into which it is asserted to fall, with a separate designation for that category (e.g., FSAR-3 and NEPA-3). Contentions bearing more than one designation (e.g., FSAR-3/NEPA-3) are not acceptable and may result in the Board making a determination regarding in which of the several designated categories the contention will be litigated.

Also, in the future petitioners should use these designations for filing any new contentions. If petitioners believe a new contention raises issues that cannot be classified as primarily falling into only one of these categories, they must set forth the contention and supporting bases in full separately for each category into which it is asserted to fall, with a separate designation for that category (e.g., SAFETY-2 and TS-1). Contentions bearing more than one designation (e.g., SAFETY-2/TS-1) are not acceptable and may result in the Board making a determination regarding in which of the several designated categories the contention will be litigated.

Based on the certificates of service that were submitted with various of the petitioner hearing requests, in accordance with section 2.309(h), AUE and NRC staff responses to those requests shall be filed on or before Friday, May 1, 2009. In those answers, in light of the recent statement by AUE President and Chief Executive Officer Thomas R. Voss relative to the

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<sup>2</sup>(...continued)  
both of which are not accessible absent a protective order. The hearing notice established a procedural construct under which Joint Petitioners could obtain access to these sections of the COLA. See [AUE]; 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, 6065-67 (Feb. 4, 2009). As far as the Board is aware, none of the petitioners sought access to these nonpublic portions of the COLA pursuant to these access procedures.

proposed Callaway Unit 2 facility that AUE "is suspending its efforts to build a nuclear power plant in Missouri," Media Release, AmerenUE Requests Sponsors to Withdraw Missouri Clean and Renewable Energy Construction Bills in General Assembly (Apr. 23, 2009), <http://ameren.mediaroom.com/index.php?s=43&item=634>, both AUE and the staff should address the current status of, and the schedule for staff review associated with, the AUE application at issue in this proceeding. Thereafter, assuming that filing and service will be done using the E-Filing system per the Commission's February 4, 2009 hearing notice,<sup>3</sup> the petitioners' replies to those applicant and staff answers shall be filed on or before Friday, May 8, 2009.

## II. ADMINISTRATIVE MATTERS

### A. Notice of Appearance

If they have not already done so, on or before Wednesday, April 29, 2009, each counsel or representative for each participant shall file a notice of appearance complying with the requirements of 10 C.F.R. § 2.314(b). In each notice of appearance, besides providing a business address and telephone number, an attorney or representative should provide a facsimile number and an Internet e-mail address. Counsel or representatives who have already submitted a notice of appearance that does not provide facsimile or e-mail information should file a supplemental statement with that information on or before that same date.

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<sup>3</sup> See 74 Fed. Reg. at 6064.

B. Limitations on Pleading Length and Reply Pleadings

1. Page Limitation

Any motion filed after the date of this memorandum and order and any related responsive pleadings shall not exceed ten pages in length (including signature page) absent preapproval of the presiding officer.<sup>4</sup> A request for presiding officer preapproval to exceed this page limitation shall be submitted in writing no fewer than three business days prior to the time the motion or responsive pleading is filed or due to be filed. A request to exceed this page limitation must (1) indicate whether the request is opposed or supported by the other participants to the proceeding; (2) provide a good faith estimate of the number of additional pages that will be filed; and (3) demonstrate good cause for being permitted to exceed the page limitation.

2. Reply Pleadings

In accordance with the agency's rules of practice, except in instances involving a motion to file a new/amended contention, see 10 C.F.R. § 2.309(c), (f)(2), leave must be sought to file a reply to a response to a motion. Compare 10 C.F.R. § 2.323(c) with id. § 2.309(h)(2). A request for presiding officer preapproval to file a reply shall be submitted in writing no fewer

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<sup>4</sup> The intervention petition supplement and any responses/replies thereto permitted under section I above are not subject to this page limitation. However, any subsequent motion for admission of a new or amended contention under section 2.309(c), (f)(2) and responses/replies thereto are subject to this page limitation. In an instance when more than one new or amended contention is being filed in connection with information that is asserted to provide the basis for a motion to admit new or amended contentions, see infra n.6, because the page limit applies regardless of the number of contentions involved, in lieu of filing multiple separate motions of ten pages seeking the admission of each individual contention, it would be preferable to seek leave of the Board to exceed the page limit. If granted, this would permit the participant to file one timely motion that deals with all the contentions being proffered relative to a particular triggering event.

than three business days prior to the time the reply will be filed.<sup>5</sup> A request to file a reply must (1) indicate whether the request is opposed or supported by the other participants to the particular proceeding; and (2) demonstrate good cause for permitting the reply to be filed.

C. Motions for Extension of Time

A motion for extension of time in these proceedings shall be submitted in writing at least three business days before the due date for the pleading or other submission for which an extension is sought.<sup>6</sup> A motion for extension of time must (1) indicate whether the request is opposed or supported by the other participants to the particular proceeding; and (2) demonstrate appropriate cause that supports permitting the extension.

D. Opposing a Request to Exceed the Page Limitation, to File a Reply, or to Extend the Time for Filing a Pleading

Any written opposition to a request to exceed the page limit, to file a reply, or to extend the time for filing a pleading shall be filed and served on the presiding officer, the Office of the Secretary, and counsel for the other participants in the particular proceeding on the next business day after the filing of the request.

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<sup>5</sup> Although the agency's rules of practice regarding motions practice do not provide for reply pleadings, the Board will presume that for a reply to be timely, it would have to be filed within seven days of the date of service of the response it is intended to address. See 10 C.F.R. § 2.309(h)(2).

<sup>6</sup> In accordance with 10 C.F.R. § 2.323(a), (c), unless some other time is specified in the agency's rules of practice or by the Board, motions generally are due within ten days after the occurrence or circumstance from which the motion arises, with any response to that motion due within ten days of service of the motion. The Board notes, however, relative to motions seeking the admission of new/amended contentions, see 10 C.F.R. § 2.309(c), (f)(2), that to be considered timely such motions should be filed within thirty days of the date upon which the information that is the basis of the motion becomes available to the petitioner/intervenor, with any response to such a motion due within fourteen days of service of the motion, and any reply to a response due within seven days of service of the response.

E. Attachments/Enclosures to Filings and Evidentiary Exhibits

If a participant files a pleading or other submission that has additional documents appended to it, these items shall be referred to as attachments or enclosures (not exhibits) and a separate alpha or numeric designation shall be given to each appended document (e.g., Attachment A, Enclosure 1), either on the first page of the appended document or on a cover/divider sheet in front of the appended document. Attachments or enclosures to a motion and any related responsive pleadings are not subject to the page limitation set forth in section II.B.1 above, but generally shall be submitted via the E-Filing system as part of a single electronic file that consists of the pleading or other submission, the certificate of service, and all the attachments or enclosures associated with the pleading or submission. In accordance with the agency's E-Filing guidance (at page 14), multiple electronic files should be used for pleadings or submissions with attachments or enclosures only if the filing exceeds fifteen megabytes in size. See [www.nrc.gov/site-help/e-submittals/adjudicatory-sub.html](http://www.nrc.gov/site-help/e-submittals/adjudicatory-sub.html) (under Related Instructional Resources, access the link for Guidance for Electronic Submissions to the NRC (rev. 4 Oct. 29, 2008)).

The label "exhibit" shall be reserved for use as a designation for those items that are submitted, whether by pre-filing or at the time of an evidentiary hearing, as potential materials a participant will seek to have identified for inclusion in the evidentiary record of the proceeding. Exhibits (and prefiled written testimony) shall be submitted via the agency's E-Filing system as separate electronic files. See 10 C.F.R. § 2.304(g).

F. Electronic Filing and Service via the Agency's E-Filing System

Participants should familiarize themselves with the agency's requirements and guidance regarding its E-Filing system, including the appropriate protocols associated with signing electronic submissions and preparing the certificate of service for each submission, which can

be found at 10 C.F.R. §§ 2.302, 2.304, 2.305, and [www.nrc.gov/site-help/e-submittals/adjudicatory-sub.html](http://www.nrc.gov/site-help/e-submittals/adjudicatory-sub.html).

Regarding the certificate of service, participant counsel/representatives are responsible for ensuring that the certificate of service that is provided for each submittal is prepared in a manner consistent with the requirements of section 2.305(c)(4) providing that the certificate of service must (1) be “signed” by the individual who makes the submission via the E-Filing system; and (2) include “the names and addresses of the persons served as well as the method of service and date of service.” In this regard, a participant counsel/representative is responsible for ensuring that (1) the E-Filing system service list for each submission (which is found under the “View Service List” tab on the Adjudicatory Docket Submission Form) includes the names and e-mail addresses of the other participant counsel/representatives that are required to be served in accordance with section 2.305; and (2) the certificate of service that accompanies the submission lists (a) the name of each participant counsel/representative who is required to be served in accordance with section 2.305, as those individuals are reflected in the E-Filing system service list, and (b) at a minimum, the e-mail address for each of those individuals to which service is required to be made as that address is reflected in the E-Filing service list. To the degree a participant counsel/representative believes the E-Filing system service list does not correctly reflect those individuals upon whom service is required, the participant counsel/representative should serve the document by e-mail or other appropriate means (e.g., overnight mail) upon that individual, which method should be reflected in the certificate of service, and bring the matter to the attention of the Board and the Office of the Secretary.

Finally, the Board notes that the agency has established a “help desk” that can be contacted by telephone or e-mail weekdays (excluding federal holidays) between 8:00 a.m. and

8:00 p.m. Eastern Time to obtain information and assistance regarding electronic filings. See Notice of Availability of an Updated Version of the Guidance for Electronic Submissions to the NRC, 73 Fed. Reg. 66,949 (Nov. 12, 2008). Questions about electronic submissions, including the appropriate portable document format (PDF) format for such submittals, can be directed to the help desk.

It is so ORDERED.

FOR THE ATOMIC SAFETY  
AND LICENSING BOARD<sup>7</sup>

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G. Paul Bollwerk, III  
CHAIRMAN

Rockville, Maryland

April 27, 2009

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<sup>7</sup> Copies of this memorandum and order were sent this date by the agency's E-Filing system to counsel for (1) applicant AUE; (2) petitioners MCE/MSE, MAHUR, PSCM, and MPC; and (3) the staff.

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

In the Matter of )  
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UNION ELECTRIC COMPANY D/B/A AmerenUE )  
 )  
(Callaway Power Plant, Unit 2) ) Docket No. 52-037-COL  
 )  
(Combined License) )

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB MEMORANDUM AND ORDER (INITIAL PREHEARING ORDER) have been served upon the following persons by Electronic Information Exchange.

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Docket No. 52-037-COL  
 LB MEMORANDUM AND ORDER (INITIAL PREHEARING ORDER)

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[Original signed by Evangeline S. Ngbea]

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Office of the Secretary of the Commission

Dated at Rockville, Maryland  
 this 27<sup>th</sup> day of April 2009