

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
)	
UNION ELECTRIC COMPANY)	
d/b/a/ AmerenUE)	Docket No. 52-037-COL
)	
(Callaway Plant Unit 2))	

NRC STAFF ANSWER TO PETITION TO INTERVENE AND
REQUEST FOR HEARING BY MISSOURIANS AGAINST HIGHER UTILITY RATES

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May 1, 2009

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INTRODUCTION

Pursuant to Title 10, *Code of Federal Regulations* (10 C.F.R.) § 2.309(h)(1), the staff of the U.S. Nuclear Regulatory Commission (Staff) hereby answers the "Petition to Intervene and Request for Hearing by Missourians Against Higher Utility Rates [MAHUR or Petitioner]" (Petition) filed on April 6, 2009. MAHUR asserts organizational and representational standing, and has filed one contention. For the reasons set forth below, the Staff does not oppose MAHUR's standing, nor does it oppose the admission of MAHUR'S proffered contention.

BACKGROUND

On July 24, 2008 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML082140630), as supplemented by letters dated September 24, 2008 (ML082730080), November 14, 2008 (ML083360149), November 25, 2008 (ML083360148), and February 25, 2009 (ML090710444), the Union Electric Company d/b/a AmerenUE (Applicant) filed with the Commission, pursuant to Section 103 of the Atomic Energy Act of 1954 and 10 C.F.R. Part 52, "Licenses, Certifications, and Approvals for Nuclear Power Plants," an application for a combined license (COL) for an evolutionary power reactor (US EPR) nuclear power plant at the existing Callaway Power Plant site located in Callaway County, Missouri (Callaway Plant Unit 2).

The Commission docketed the application as sufficient for Staff review on December 18, 2008. Union Electric d/b/a AmerenUE; Acceptance for Docketing of an Application for Combined License for Callaway Plant Unit 2 Nuclear Power Plant, 73 Fed. Reg. 77,078 (Dec. 18, 2008). On February 4, 2009, the NRC published a "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 (Feb. 4, 2009).

Petitioner filed its Petition on April 6, 2009. On April 6, 2009, petitions were also filed by two Missouri state agencies, the Office of Public Counsel and the Missouri Public Service Commission. A joint petition was filed by Missouri Coalition for the Environment and the Missourians for Safe Energy.

An important part of the COL Application discussed extensively below is the Final Safety Analysis Report (FSAR). The COL Application also incorporates by reference Revision 0 of the US EPR design control document (DCD) application, which was submitted to the NRC by AREVA NP Inc. (Areva) on December 11, 2007. This DCD application is the subject of NRC rulemaking under Docket No. 52-020.

DISCUSSION

The Petitioner alleges representational standing based upon its representation of two of its members who live within 50 miles of the Callaway site. Petition at 4. The Petitioner has submitted one contention. As explained below, the Staff does not oppose MAHUR's claim to representational standing, and does not oppose admission of its sole contention.

I. Legal Standards

A. Standing to Intervene

In accordance with the Commission's Rules of Practice:¹

[a]ny person whose interest may be affected by a proceeding and who desires to participate as a party must file a written request for hearing or petition for leave to intervene and a specification of the contentions that the person seeks to have litigated in the hearing.

10 C.F.R. § 2.309(a). The regulations further provide that the Licensing Board:

will grant the [petition] if it determines that the [petitioner] has standing under the provisions of [10 C.F.R. § 2.309(d)] and has proposed at least one admissible contention that meets the requirements of [10 C.F.R. § 2.309(f)].

Id.

Under the general standing requirements set forth in 10 C.F.R. § 2.309(d)(1), a request for hearing or petition for leave to intervene must state:

- (i) The name, address and telephone number of the requestor or petitioner;
- (ii) The nature of the requestor's/petitioner's right under the [Atomic Energy Act of 1954, as amended (Act)] to be made a party to the proceeding;
- (iii) The nature and extent of the requestor's/petitioner's property, financial or other interest in the proceeding; and
- (iv) The possible effect of any decision or order that may be issued in the proceeding on the requestor's/petitioner's interest.

10 C.F.R. § 2.309(d)(1).

As the Commission has observed:

[a]t the heart of the standing inquiry is whether the petitioner has "alleged such a personal stake in the outcome of the controversy"

¹ See Rules of Practice for Domestic Licensing Proceedings and Issuance of Orders, 10 C.F.R. Part 2.

as to demonstrate that a concrete adverseness exists which will sharpen the presentation of issues.

Sequoyah Fuels Corp. and Gen. Atomics (Gore, Oklahoma Site), CLI-94-12, 40 NRC 64, 71 (1994) (citing *Duke Power Co. v. Carolina Env'tl. Study Group, Inc.*, 438 U.S. 59, 72 (1978), and quoting *Baker v. Carr*, 369 U.S. 186, 204 (1962)).

To demonstrate such a “personal stake,” the Commission applies contemporaneous judicial concepts of standing. Accordingly, petitioner must (1) allege an “injury in fact” that is (2) “fairly traceable to the challenged action” and (3) is “likely” to be “redressed by a favorable decision.”

Sequoyah Fuels, 40 NRC at 71-72 (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 505, 560-61 (1992) (citations and internal quotations omitted) and citing *Cleveland Elec. Illuminating Co.* (Perry Nuclear Power Plant, Unit 1), CLI-93-21, 38 NRC 87, 92 (1993)). See also *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-99-10, 49 NRC 318, 323 (1999).

In reactor license proceedings, licensing boards have typically applied a “proximity” presumption to persons “who reside in or frequent the area within a 50-mile radius” of the plant in question. See, e.g., *Fla. Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 & 4), LBP-01-6, 53 NRC 138, 148 (2001).² The Commission noted this practice with approval, stating that:

We have held that living within a specific distance from the plant is enough to confer standing on an individual or group in proceedings for construction permits, operating licenses, or significant amendments thereto[.] See, e.g. *Virginia Electric and Power Co.* (North Anna Power Station, Units 1 and 2), ALAB-522, 9 NRC 54 (1979) . . . [T]hose cases involved the construction or operation of the reactor itself, with clear implications for the offsite

² The *Turkey Point* decision summarizes the development of this doctrine. See *Turkey Point*, LBP-01-6, 53 NRC at 147-48.

environment[.] See, e.g., *Gulf States Utilities Co.* (River Bend Station, Units 1 and 2), ALAB-183, 8 [sic, 7] AEC 222, 226 (1974).

Fla. Power & Light Co. (St. Lucie Nuclear Power Plant, Units 1 & 2), CLI-89-21, 30 NRC 325, 329 (1989). The proximity presumption establishes standing without the need to establish the elements of injury, causation, or redressability. *Turkey Point*, LBP-01-6, 53 NRC at 150.

Because a COL application is an application for a construction permit combined with an operating license (see 10 C.F.R. § 52.1(a)), the proximity presumption has been applied to COL proceedings. See *Duke Energy Carolinas, LLC* (Combined License Application for William States Lee III Nuclear Station, Units 1 & 2), LBP-08-17, 67 NRC __ (2008) (slip op. at 5); *Tennessee Valley Authority* (Bellefonte Nuclear Power Plant Units 3 & 4), LBP-08-16, 67 NRC __ (2008) (slip op. at 8).

An organization may establish its standing to intervene based on organizational standing (showing that its own organizational interests could be adversely affected by the proceeding), or representational standing (based on the standing of its members). Where an organization seeks to establish representational standing, it must show that at least one of its members may be affected by the proceeding, it must identify that member by name and address and it must show that the member “has authorized the organization to represent him or her and to request a hearing on his or her behalf.” See, e.g., *Entergy Nuclear Operations Inc. and Entergy Nuclear Palisades, LLC* (Palisades Nuclear Plant) et al, CLI-08-19, 68 NRC __ (slip op. at 6-7) (Aug. 22, 2008). Further, for the organization to establish representational standing, the member seeking representation must qualify for standing in his or her own right, the interests that the organization seeks to protect must be germane to its own purpose, and neither the asserted claim nor the requested relief must require an individual member to participate in the organization's legal action. *Palisades*, CLI-07-18, 65 NRC at 409; *Private Fuel Storage*, CLI-99-

10, 49 NRC at 323 (citing *Hunt v. Wash. State Apple Advertising Comm'n*, 432 U.S. 333, 343 (1977)).

B. Legal Requirements for Contentions

The legal requirements governing the admissibility of contentions are well established and currently are set forth in 10 C.F.R. § 2.309(f) of the Commission's Rules of Practice (formerly § 2.714(b)).³

The standards in 10 C.F.R. § 2.309(f)(1) may be summarized as follows. An admissible contention must: (1) provide a specific statement of the legal or factual issue sought to be raised; (2) provide a brief explanation of the basis for the contention; (3) demonstrate that the issue raised is within the scope of the proceeding; (4) demonstrate that the issue raised is material to the findings the NRC must make to support the action that is involved in the proceeding; (5) provide a concise statement of the alleged facts or expert opinions, including references to specific sources and documents, that support the petitioner's position and upon which the petitioner intends to rely at the hearing; and (6) provide sufficient information to show that a genuine dispute with the applicant exists with regard to a material issue of law or fact, including references to specific portions of the application that the petitioner disputes, or in the

³ The Commission codified the requirements of former § 2.714, together with rules regarding contentions set forth in Commission cases, in § 2.309 in 2004. See *Changes to Adjudicatory Process*; Final Rule, 69 Fed. Reg. 2182 (Jan. 14, 2004), as *corrected*, 69 Fed. Reg. 25,997 (May 11, 2004). In the Statements of Consideration for the final rule, the Commission cited several Commission and Atomic Safety and Licensing Appeal Board decisions applying former § 2.714 in support of the codified provisions of § 2.309. See 69 Fed. Reg. at 2202. Accordingly, Commission and Appeal Board decisions on former § 2.714 retain their vitality, except to the extent the Commission changed the provisions of § 2.309 as compared to former § 2.714.

case when the application is alleged to be deficient, the identification of such deficiencies and supporting reasons for this belief.⁴

⁴ 10 C.F.R. § 2.309(f)(1)(i)-(vi). Section 2.309(f) states the following requirements for contentions:

(f) Contentions. (1) A request for hearing or petition for leave to intervene must set forth with particularity the contentions sought to be raised. For each contention, the request or petition must:

- (i) Provide a specific statement of the issue of law or fact to be raised or controverted, *provided further*, that the issue of law or fact to be raised in a request for hearing under 10 C.F.R. 52.103(b) must be directed at demonstrating that one or more of the acceptance criteria in the combined license have not been, or will not be met, and that the specific operational consequences of nonconformance would be contrary to providing reasonable assurance of adequate protection of the public health and safety;
- (ii) Provide a brief explanation of the basis for the contention;
- (iii) Demonstrate that the issue raised in the contention is within the scope of the proceeding;
- (iv) Demonstrate that the issue raised in the contention is material to the findings the NRC must make to support the action that is involved in the proceeding;
- (v) Provide a concise statement of the alleged facts or expert opinions which support the requestor's/petitioner's position on the issue and on which the petitioner intends to rely at hearing, together with references to the specific sources and documents on which the requestor/petitioner intends to rely to support its position on the issue;
- (vi) In a proceeding other than one under 10 C.F.R. 52.103, provide sufficient information to show that a genuine dispute exists with the applicant/licensee on a material issue of law or fact. This information must include references to specific portions of the application (including the applicant's environmental report and safety report) that the petitioner disputes and the supporting reasons for each dispute, or, if the petitioner believes that the application fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the petitioner's belief; and . . .

(2) Contentions must be based on documents or other information available at the time the petition is to be filed, such as the application, supporting safety analysis report, environmental report or other supporting document filed by an applicant or licensee, or otherwise available to a petitioner. On issues arising under the National Environmental Policy Act, the petitioner shall file contentions based on the applicant's environmental report.

(continued. . .)

Sound legal and policy considerations underlie the Commission's contention requirements. The purpose of the contention rule is to "focus litigation on concrete issues and result in a clearer and more focused record for decision." 69 Fed. Reg. at 2202; *see also Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 553-54 (1978); *BPI v. AEC*, 502 F.2d 424, 428 (D.C. Cir. 1974); *Phila. Elec. Co.* (Peach Bottom Atomic Power Station, Units 2 & 3), ALAB-216, 8 AEC 13, 20 (1974). The Commission has stated that it "should not have to expend resources to support the hearing process unless there is an issue that is appropriate for and susceptible to, resolution in an NRC hearing." 69 Fed. Reg. at 2202. The Commission has emphasized that the rules on contention admissibility are "strict by design." *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 & 3), CLI-01-24, 54 NRC 349, 358 (2001), *pet. for reconsideration denied*, CLI-02-01, 55 NRC 1 (2002). Failure to comply with any of these requirements is grounds for the dismissal of a contention. 69 Fed. Reg. at 2221; *see also Private Fuel Storage, L.L.C.*, CLI-99-10, 49 NRC at 325; *Arizona Public Service Co. et al.* (Palo Verde Nuclear Generating Station, Units 1, 2, & 3), CLI-91-12, 34 NRC 149, 155-56 (1991). "Mere 'notice pleading' does not suffice."⁵ *Amergen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-06-24, 64 NRC 111, 119 (2006).

(. . .continued)

10 C.F.R. § 2.309(f)(1)-(2).

⁵ *See also Palo Verde*, CLI-91-12, 34 NRC at 155; *Long Island Lighting Co.* (Shoreham Nuclear Power Station, Unit 1), LBP-91-35, 34 NRC 163, 167-68 (1991). These requirements are intended, *inter alia*, to ensure that a petitioner reviews the application and supporting documentation prior to filing contentions; that the contention is supported by at least some facts or expert opinion known to the petitioner at the time of filing; and that a genuine dispute exists between the petitioner and the applicant before a contention is admitted for litigation -- so as to avoid the practice of filing contentions which lack any factual support and seeking to flesh them out later through discovery. *See, e.g., Shoreham*, LBP-91-35, 34 NRC at 167-68.

Finally, it is well established that the purpose for the basis requirements is: (1) to assure that the contention raises a matter appropriate for adjudication in a particular proceeding; (2) to establish a sufficient foundation for the contention to warrant further inquiry into the assertion; and (3) to put other parties sufficiently on notice of the issues so that they will know generally what they will have to defend against or oppose. *Peach Bottom*, ALAB-216, 8 AEC at 20-21; *Ariz. Pub. Serv. Co., et al.* (Palo Verde Nuclear Generating Station, Units 1, 2 & 3), LBP-91-19, 33 NRC 397, 400 (1991). The *Peach Bottom* decision requires that a contention be rejected if:

- (1) it constitutes an attack on applicable statutory requirements;
- (2) it challenges the basic structure of the Commission's regulatory process or is an attack on the regulations;
- (3) it is nothing more than a generalization regarding the petitioner's view of what applicable policies ought to be;
- (4) it seeks to raise an issue which is not proper for adjudication in the proceeding or does not apply to the facility in question; or
- (5) it seeks to raise an issue which is not concrete or litigable.

Peach Bottom, ALAB-216, 8 AEC at 20-21.

These rules focus the hearing process on real disputes susceptible of resolution in an adjudication. See *Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2, & 3), CLI-99-11, 49 NRC 328, 334 (1999). For example, "a petitioner may not demand an adjudicatory hearing to attack generic NRC requirements or regulations or to express generalized grievances about NRC policies." *Id.* Specifically, NRC regulations do not allow a contention to attack a regulation unless the proponent requests a waiver from the Commission. 10 C.F.R. § 2.335; *Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), *Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), CLI-07-3, 65 NRC 13, 17-18 and n.15 (2007) (citing *Millstone*, CLI-01-24, 54 NRC at 364).

II. Legal Analysis

A. Standing of Missourians Against Higher Utility Rates

MAHUR asserts representational standing to intervene in this proceeding. MAHUR states that two of its members who live within 50 miles of the proposed site have authorized MAHUR to represent them in this proceeding. Petition at 6. These individuals are Nicole Brown and Eric Brooks. *Id.*⁶

In order to establish representational standing, an organization must demonstrate, among other things, that at least one of its members would otherwise have standing to participate in his or her own right and at least one of its members has authorized the organization to represent the member's interests. *See Palisades*, CLI-07-18, 65 NRC at 409.

Here, MAHUR has provided declarations from two of its members. These declarants have provided similar statements asserting that he or she is a member of MAHUR, lives within 50 miles of the Callaway site, and authorizes MAHUR to represent him or her in this proceeding. Petition at Brown Decl. ¶¶1,3 & 4, Brooks Decl. ¶¶1,3 & 4. Both members seek to protect their life and health and safety interests in this proceeding. Petition at 6, 7.⁷ In view of the foregoing,

⁶ See Petition Exhs. 1 (Declaration [of Nicole Brown] in Support of Missourians Against Higher Utility Rates Petition to Intervene in Docket No. 52-037 (Apr. 6, 2009)), 2 (Declaration [of Eric Brooks] in Support of Missourians Against Higher Utility Rates Petition to Intervene in Docket No. 52-037 (Apr. 6, 2009)).

⁷ Petitioner also asserts, as its name indicates, that its members have an economic interest as rate payers in this proceeding. Economic interests of rate payers that are not connected to an environmental or radiological harm do not fall within the zone of interests protected by the Atomic Energy Act and, therefore, cannot confer standing. *See Pacific Gas & Electric Co.* (Dominion Canyon Power Plant, Units 1 & 2), CLI-02-16, 55 NRC 317, 336 n.23 (citing *Metropolitan Edison Co.* (Three Mile Island Nuclear Station, Unit 1), CLI-83-25, 18 NRC 327, 332 n. 4 (1983) (citing *Portland General Elec. Co.* (Pebble Springs Nuclear Plant, Units 1 & 2), CLI-76-27, 4 NRC 610, 614 (1976) (stating "ratepayer interests do not confer standing.")). The fact that the members and the organization seek to protect economic interests will not preclude standing because both members and the organization have also asserted health and safety interests.

these two MAHUR members have established standing to intervene in their own right by satisfying the proximity presumption.⁸

MAHUR must also show that the interests it seeks to protect are germane to its own purpose, and that neither its claim, nor the requested relief requires an individual member to participate in the action. *Palisades*, CLI-07-18, 65 NRC at 409. MAHUR describes itself as a citizens group that was formed “to provide an information and networking center for individuals concerned about nuclear energy and its costs both in terms of its financial impact on ratepayers as well as its toll on human health and the environment.” Petition at 3. These interests are germane to the interests of the members MCE seeks to protect, who state that:

I am concerned that AmerenUE does not have a reasonable assurance of obtaining the funds necessary to construct a nuclear power plant in a manner that will be protective of human health, safety and the environment. If the NRC grants AmerenUE’s COLA without AmerenUE demonstrating reasonable assurance that it will obtain the necessary funds, proper construction of the proposed nuclear power plant could be impaired, which would adversely affect my health and safety and the integrity of the environment where I live.

Exh. 1 at ¶2, Exh. 2 at ¶2. MAHUR has satisfied the standards for representational standing set forth in *Palisades*, CLI-07-18, 65 NRC at 409 because two of its members have established standing to intervene in their own right and have authorized MAHUR, whose organizational interests are germane to those whom it would represent, to represent their interests in this proceeding. Therefore, the Staff does not object to MAHUR’s representational standing to petition to intervene on behalf of its members.

⁸ All address locations were confirmed to be within 50 miles of the proposed plant by using the mapping programs at <http://maps.yahoo.com>, <http://maps.google.com> and <http://www.infoplease.com/atlas/calculate-distance.html>.

B. Petitioner's Proposed Contention G/A/FI-1

The Applicant Does Not Meet the Financial Qualification
Requirements of 10 C.F.R. § 50.33.

Petition at 8. The Petitioner asserts that the Applicant “does not possess, and cannot demonstrate a reasonable assurance of obtaining, funds necessary to cover estimated construction costs and related fuel cycle costs;” and that the Applicant’s proposed funding of construction costs and initial core fuel supply costs are based entirely upon rate-based recovery for construction work in progress (CWIP). *Id.* The Petitioner claims that this is significant because CWIP is prohibited by Missouri law, RSMo. 393.135. Petition at 9.

The Petitioner asserts that the Applicant concedes in its FSAR that it cannot fund construction without CWIP funds, where it provides no funding mechanism except for CWIP. Petition at 8, 9. The Petitioner quotes Applicant executives making statements to the same effect. *Id.* Lastly, the Petitioner expresses concern that permitting construction and operation for an Applicant with insufficient financing could compromise public health and safety. Petition at 11.

Staff Response: The Petitioner claims that the Applicant does not satisfy the financial qualification requirement of 10 C.F.R. § 50.33. For the reasons set forth below, the Staff does not oppose admission of Proposed Contention G/A/FI-1.

The NRC’s regulations found at 10 C.F.R. § 50.33(f), as incorporated into 10 C.F.R. Part 52 by 10 C.F.R. § 52.77, provide that:

f) Except for an electric utility applicant for a license to operate a utilization facility of the type described in § 50.21(b) or § 50.22, information sufficient to demonstrate to the Commission the financial qualification of the applicant to carry out, in accordance with regulations in this chapter, the activities for which the permit or license is sought. As applicable, the following should be provided:

(1) If the application is for a construction permit, the applicant shall submit information that demonstrates that the applicant possesses

or has reasonable assurance of obtaining the funds necessary to cover estimated construction costs and related fuel cycle costs. The applicant shall submit estimates of the total construction costs of the facility and related fuel cycle costs, and shall indicate the source(s) of funds to cover these costs.

The Petitioner points to the FSAR at Section 1.2.2.2.2, which states that the Applicant's construction "cost estimate would likely increase and AmerenUE would need to reevaluate its options . . . There are no federal loan guarantees assumed in the estimate at this time." Petition at 9. The Petitioner also points to quotations from senior AmerenUE officials stating that

'[in the absence of CWIP] we just couldn't do it . . . The risk would be too great. We don't think people would lend us the money. We don't think our board of directors would approve it. And we don't think our stockholders would think it's prudent.' In another interview, AmerenUE Senior Vice President Richard Mark flatly stated that without rate-based recovery of CWIP, AmerenUE would not build the project, because '[it would be] laughed off Wall Street.' Mr. Voss repeated that position in testimony before a Missouri Senate committee, testifying that without recovery of CWIP, 'we won't build [Callaway 2].'

Petition at 10 (internal citations omitted). .

The Application goes on to state, in Section 1.2.2.2.3, "Construction Cost Funding Plan," that:

AmerenUE has a number of options for funding the construction costs and related fuel cycle expenses of the Callaway Plant Unit 2. Since this unit would join Callaway Plant Unit 1 as part of a regulated asset pool eligible for cost recovery in its regulated Missouri jurisdiction, AmerenUE would employ financing through a variety of sources. There is reasonable assurance that AmerenUE and Ameren can access capital sufficient for the construction and initial fuel cycle expenses.

AmerenUE would permanently fund construction costs through three primary sources: cash from operations, debt or other securities issued by AmerenUE, and equity provided by Ameren. AmerenUE would be able to issue short-term debt via borrowings under the \$1.15 billion credit facility or other credit facilities, commercial paper or borrowings from Ameren on a short-term basis to fund a portion of its capital requirements until such time as it elects to issue long-term capital.

FSAR, Section 1.2.2.2.3. However, the Application does not discuss the Applicant's financial qualifications to construct and operate the proposed plant in the absence of CWIP. Therefore, the Petitioner has identified a genuine dispute with the Applicant on a material issue of fact. It has cited the specific portions of the application with which it takes issue and has provided supporting reasons for its dispute. See 10 C.F.R. § 2.309(f)(1)(vi). That dispute is within the scope of this proceeding and is material to the findings that the NRC must make. Therefore, Proposed Contention G/A/FI-1 satisfies the NRC's contention admissibility criteria, and the Staff does not object to the admission of the contention.⁹

⁹ The Staff is aware that subsequent to the removal of CWIP funding from an energy bill in the Missouri Senate, the Applicant put out a press release stating that "[a] large plant would be difficult to finance under the best of conditions, but in today's credit constrained markets, without supportive state energy policies, we believe getting financial backing for these projects is impossible;" and that the Applicant would not be proceeding with construction of the proposed plant. See "AmerenUE Requests Sponsors to Withdraw Missouri Clean and Renewable Energy Construction Bills in General Assembly," available at <http://ameren.mediaroom.com/index.php?s=43&item=634> (accessed on May 1, 2009). The impacts of this announcement on the Staff's review are discussed in the Staff's May 1, 2009 letter to the Board.

CONCLUSION

For the reasons set forth above, MAHUR has established standing and has proffered and admissible contention. Therefore, the Staff does not oppose granting this Petition.

Respectfully submitted,

/Signed (electronically) by/

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

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Dated at Rockville, Maryland
this 1st day of May, 2009

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of

UNION ELECTRIC COMPANY
d/b/a AmerenUE

(Callaway Plant Unit 2)

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Docket No. 52-037-COL

CERTIFICATE OF SERVICE

I hereby certify that copies of NRC STAFF ANSWER TO PETITION TO INTERVENE AND REQUEST FOR HEARING BY MISSOURIANS AGAINST HIGHER UTILITY RATES have been served upon the following persons by Electronic Information Exchange and electronic mail this 1st day of May, 2009:

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