

May 6, 2009

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

Before the Atomic Safety and Licensing Board

In the Matter of)	
)	Docket No. 52-037-COL
UNION ELECTRIC COMPANY d/b/a AmerenUE)	
)	
(Callaway Power Plant, Unit 2))	ASLBP No. 09-884-07-COL-BD01
)	
(Combined License))	

AmerenUE's Answer Opposing MCE/MSE's Motion for Extension of Time

Pursuant to 10 C.F.R. § 2.323(c), the Atomic Safety and Licensing Board's ("Board") Initial Prehearing Order¹ and its Memorandum and Order (Supplement to Extension Motion),² Union Electric Company d/b/a AmerenUE ("AmerenUE") hereby answers and opposes Missouri Coalition for the Environment and Missourians for Safe Energy's ("MCE/MSE" or "Petitioners") Revised Motion for Extension of Time to File a Reply ("Motion"), filed on May 6, 2009.³ The Motion asks the Board for a seven-day extension of time in which to file Petitioners' reply to AmerenUE's and the NRC Staff's answers to Petitioners' petition to intervene, citing the length of the answers as cause for such extension. The Board should deny the Motion because it is procedurally deficient and fails to show appropriate cause.

¹ AmerenUE (Callaway Plant Unit 2), Memorandum and Order (Initial Prehearing Order) at 7 (Apr. 27, 2009).

² AmerenUE (Callaway Plant Unit 2), Memorandum and Order (Supplement to Extension Motion) (May 5, 2009).

³ AmerenUE notes that MCE/MSE improperly filed their Motion with the Secretary though this proceeding is currently before the Board. The original Motion, filed on May 4, 2009, was also improperly filed with the Secretary.

The Board's Initial Prehearing Order requires that "[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." Initial Prehearing Order at 7. Petitioners' Motion fails to show appropriate cause.

Although Petitioners state that they are unable to respond to the answers by the May 8, 2009, deadline due to the answers' length, this assertion falls far short of demonstrating appropriate cause to support permitting an extension. The Commission's 1998 Policy Statement on the Conduct of Adjudicatory Proceedings counsels that Boards should only grant extensions of time "when warranted by unavoidable and extreme circumstances." CLI-98-12, 48 N.R.C. 18, 21 (1998). Although it is uncertain whether that standard has been superseded by the 2004 revisions to 10 C.F.R. Part 2,⁴ Petitioners' Motion fails to satisfy either the standard set forth in the 1998 Policy Statement or the 10 C.F.R. § 2.307(a) "good cause" standard of the 2004 Part 2 revisions. Petitioners assert that the answers "total 220 pages, more than four times the length" of their Petition to Intervene and Request for Hearing. Motion at 1. Including all attachments, however, MCE/MSE's Petition actually totals in excess of 400 pages. Furthermore, Petitioners have two attorneys representing them this proceeding,⁵ with a third attorney on staff at the Great Rivers Environmental Law Center⁶ who may also be available to review and respond to AmerenUE's and the NRC Staff's answers. Especially given the limited scope of a reply, Petitioners have not shown good cause for permitting an extension of time. In this context, AmerenUE would also note that MCE/MSE's Motion states that, in addition to replying to the

⁴ See Exelon Generation Co., LLC (Early Site Permit for Clinton ESP Site), Order (Granting Extension Request), at 3 n.2 (June 3, 2004) (ADAMS Accession No. ML041550744).

⁵ Although only Henry Robertson has filed a Notice of Appearance as required by the Board's Initial Prehearing Order (at 5), both Mr. Robertson and Bruce Morrison appear in the signature block of MCE/MSE's Petition.

⁶ See www.greatriverslaw.org/staff_list.html (last visited May 6, 2009).

contentions, “the suspension of the financial qualifications review also needs to be addressed.” Motion at 1. Since the reply cannot exceed the scope of the contentions or the scope of the answers to the contentions, MCE/MSE certainly cannot justify its need for more time based on this out-of-scope allegation.

For the foregoing reasons, AmerenUE respectfully requests that MCE/MSE’s Motion should be denied.

Respectfully Submitted,

/Signed (electronically) by Stefanie M. Nelson/

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CERTIFICATE OF SERVICE

I hereby certify that, on this 6th day of May 2009, a copy of the foregoing "AmerenUE's Answer Opposing MCE/MSE's Motion for Extension of Time," dated May 6, 2009, was provided to the Electronic Information Exchange for service upon the following persons.

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