

May 6, 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	)	Docket No. 52-037-COL
	)	
(Callaway Plant Unit 2)	)	

NRC STAFF ANSWER OPPOSING REVISED
MOTION FOR EXTENSION OF TIME TO FILE REPLY

Pursuant to the Atomic Safety and Licensing Board's ("Board") April 27, 2009 Memorandum and Order (Initial Prehearing Order) ("Order") and May 5, 2009 Memorandum and Order (Supplemental Extension Motion) ("Supplemental Order"), the NRC Staff files its response in opposition to the "Revised Motion for Extension of Time to File Reply" ("Motion") filed by the Missouri Coalition for the Environment and Missourians for Safe Energy (collectively, "Petitioners") on May 6, 2009.¹

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), Union Electric Company, d/b/a AmerenUE ("Applicant"), filed with the Commission an application for a combined license (COL) for an

¹ The Board issued its Supplemental Order after Petitioners filed their initial "Motion for Extension of Time to File Reply" on May 4, 2009. The Board stated that it did "not appear that the MCE/MSE pleading addresses the requirement in 10 C.F.R. § 2.323(b)" Supplemental Order at 1. Thus, the Board stated that Petitioners had until noon on May 6, 2009 to re-file their Motion to conform to this provision. See *id.*

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 COL 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).

Petitioners filed their Petition to Intervene on April 6, 2009. The Staff and Applicant filed answers thereto on May 1, 2009.² Therefore, in accordance with 10 C.F.R. § 2.309(h)(2), Petitioners' reply to the Staff and Applicant's answers is due on May 8, 2009. Petitioners, however, now request a seven-day extension to file their reply on May 15, 2009.³ See Motion at 2.

DISCUSSION

The Staff opposes Petitioners' request for an extension of time to file their Reply because Petitioners have failed to follow the Board's instructions regarding motions for

² NRC Staff Answer to Petition to Intervene and Request for Hearing in Callaway Plant Unit 2 Combined Construction and Operating License Application (May 1, 2009); AmerenUE's Answer Opposing the Missouri Coalition for the Environment and Missourians for Safe Energy's Petition to Intervene and Request for Hearing in Callaway Plant Unit 2 Combined Construction and Operating License Application (May 1, 2009).

³ While the Motion states that it is filed pursuant to 10 C.F.R. § 2.307(a), the Staff understands the Motion to be filed pursuant to 10 C.F.R. § 2.323, consistent with the Commission's regulations, the Board's Order, and the Petitioners' pleading titled "*Motion for Extension of Time to File Reply*," (emphasis added). See 10 C.F.R. § 2.323; Order at 7.

extensions of time. See Order at 7. The Order states that a motion for extension of time should be filed in accordance with 10 C.F.R. § 2.323, must “indicate whether the request is opposed or supported by the other participants,” and must “demonstrate appropriate cause that supports permitting the extension.” See Order at 7 and n.6.

Here, in accordance with the Board’s Order and Supplemental Order, Petitioners have indicated whether their request is supported or opposed by the other participants in the proceeding. See Motion at 1. However, Petitioners have failed to show that their request is supported by appropriate cause.

The Commission has stated that extensions of time in its adjudicatory proceedings are to be granted “only when warranted by unavoidable and extreme circumstances.” Statement of Policy on Conduct of Adjudicatory Proceedings, CLI-98-12, 48 NRC 18, 21 (1998)⁴. The only cause stated for Petitioners’ request for additional time for their reply is:

[t]he two answers total 220 pages, and Staff and UE had a collective 50 days to prepare them. UE contests all 11 contentions; Staff contests 10 and one-half. The process of responding is highly laborious Counsel for MCE/MSE does not believe that he can adequately reply to the numerous points made or attempted to be made in the answers in one week.

Motion at 1.

The Staff maintains that this does not constitute an “unavoidable and extreme circumstance.” The NRC’s Rules of Practice do not place page limitations on either petitions to intervene or answers to petitions to intervene. Petitioners had 60 days to draft their Petition to

⁴ While the Statement of Policy on Conduct of Adjudicatory Proceedings precedes the Commission’s revision to Part 2, the Commission Statement, including the position that an extension of time is appropriate only where the requester has shown “extreme and unavoidable circumstances,” was endorsed in the 2004 final rule. See Changes to Adjudicatory Process, 69 Fed. Reg. 2182, 2182-83, 2186 (Jan. 14, 2004).

Intervene, and, including attachments, their Petition to Intervene exceeded 300 pages. See Petition to Intervene and Request for Hearing in Callaway Plant Unit 2 Combined Construction and Operating License Application (Apr. 6, 2009) and attachments thereto (ADAMS Accession No. ML090960704). The NRC Staff and the Applicant and any other party had 25 days to prepare their answers, without regard to length of the Petition to Intervene. See 10 C.F.R. § 2.309(h)(1).

Section 2.309 states that replies to any answer are due seven days after service of that answer. 10 C.F.R. § 2.309(h)(2). These dates are set to maintain the effectiveness and efficiency of the NRC's hearing process. The Staff submits that the length of the Staff and Applicant's answers, especially when considered in the context of the Petitioners' Petition to Intervene, cannot constitute the "extreme circumstances" that the Commission's policy requires for an extension to be granted. Thus, the Petitioners' request for twice the amount of time allotted in the regulations should be denied.

CONCLUSION

Therefore, for the reasons discussed above, Petitioners' Motion should be denied.

Respectfully submitted,

/Signed (electronically) by/

Adam S. Gendelman
Counsel for NRC Staff
U.S. Nuclear Regulatory Commission
Mail Stop O15-D21
Washington, DC 20555-0001
(301) 415-8445
adam.gendelman@nrc.gov

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

Jessica A. Bielecki
Counsel for NRC Staff
U.S. Nuclear Regulatory Commission
Mail Stop O15-D21
Washington, DC 20555-0001
(301) 415-1391
jessica.bielecki@nrc.gov

Dated at Rockville, Maryland
this 6th day of May, 2009

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CERTIFICATE OF SERVICE

I hereby certify that copies of NRC STAFF ANSWER OPPOSING REVISED MOTION FOR EXTENSION OF TIME TO FILE REPLY have been served upon the following persons by Electronic Information Exchange and electronic mail this 6th day of May, 2009:

Administrative Judge
G. Paul Bollwerk, III, Chair
Atomic Safety and Licensing Board Panel
Mail Stop – T-3 F23
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
E-mail: Paul.Bollwerk@nrc.gov

Office of the Secretary
ATTN: Docketing and Service
Mail Stop 0-16C1
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
E-mail: HEARINGDOCKET@nrc.gov

Administrative Judge
Richard F. Cole
Atomic Safety and Licensing Board Panel
Mail Stop – T-3 F23
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
E-mail: Richard.Cole@nrc.gov

Office of Commission Appellate
Adjudication
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
E-mail: ocaamail@nrc.gov

Administrative Judge
Jeffrey D.E. Jeffries
Atomic Safety and Licensing Board Panel
Mail Stop – T-3 F23
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
E-mail: Jeffrey.Jeffries@nrc.gov

Steven Dottheim
Steven C. Reed
Kevin A. Thompson
Missouri Public Service
P. O. Box 360
Jefferson City, MO 65102
E-mail: steve.dottheim@psc.mo.gov
E-mail: steven.reed@psc.mo.gov
E-mail: kevin.thompson@psc.mo.gov

Hubert A. Farbes, Jr.
John A. Helfrich
Victoria O. Williams
Counsel for Missourians Against High Utility
Rates
Brownstein Hyatt Faber Schreck, LLP
410 Seventeenth Street, Suite 2200
Denver, CO 80202
E-mail: hfarbes@bhfs.com

Henry B. Robertson
Bruce A. Morrison
Attorneys for Missouri Coalition for the
Environment and Missourians for Safe
Energy
Great Rivers Environmental Law Center
705 Olive Street, Suite 614
St. Louis, Missouri 63101
E-mail: hrobertson@greatriverslaw.org
E-mail: bamorrison@greatriverslaw.org

Jay E. Silberg
Robert B. Haemer
Jason B. Parker
Alison M. Crane
Counsel for the Applicant
Pillsbury Winthrop Shaw Pittman, LLP
2300 N Street, NW
Washington, DC 20037-1122
E-mail: jay.silberg@pillsburylaw.com
E-mail: robert.haemer@pillsburylaw.com
E-mail: jason.parker@pillsburylaw.com
E-mail: alison.crane@pillsburylaw.com

Lewis Mills
Public Counsel
Missouri Office of the Public Counsel
P.O. Box 2230
Jefferson City, MO 65102
E-mail: lewis.mills@ded.mo.gov

/Signed (electronically) by/

Adam S. Gendelman
Counsel for NRC Staff
U.S. Nuclear Regulatory Commission
Mail Stop O15-D21
Washington, DC 20555-0001
(301) 415-8445
adam.gendelman@nrc.gov