

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

July 7, 2009

MEMORANDUM AND ORDER

(Permitting Reply to Responses to Motion to Terminate Hearing;
Prehearing Conference Argument Time
Allocations; Electronic Copy of Application)

A. Permission to File Reply to Responses to Motion to Terminate Hearing

In light of the issues raised in the various July 6, 2009 answers filed in response to applicant AmerenUE's (AUE) June 26, 2009 motion to terminate the hearing on contested matters in this proceeding, including the suggestion that the Licensing Board direct the withdrawal of the AUE application and award litigation expenses, including attorney's fees, to petitioners, see Response of MCE/MSE to [AUE] Motion Requesting Termination of Hearing (July 6, 2009) at 3-6, AUE shall have up to and including Monday, July 13, 2009, within which to file a reply to the answers to its motion to terminate, which shall not exceed ten pages in length.

Additionally, the sui generis nature of the circumstances associated with the AUE motion to terminate this hearing, which comes in the context of the relatively new combined license (COL) process and includes the possibility that the Board could (either before or after ruling on the hearing petitions) suspend rather than terminate the adjudication, persuades the Board that

the AUE motion should be one of the subjects explored during oral argument at the initial prehearing conference scheduled for July 28, 2009.

B. Argument Order and Time Allocations

For the July 28 initial prehearing conference in this COL proceeding, which is scheduled to begin at 9:00 a.m. Central Time (CT) at the Kent and Judith Mueller Student Center, Westminister College, Fulton, Missouri, the order of argument for the various matters at issue and the allocation of time for argument by participant counsel/representatives as to each of the issues and/or contention groupings is outlined below:

1. Applicant AUE's June 26, 2009 motion to terminate the hearing (20/15/5);¹
2. Admission of petitioner Missouri Office of the Public Counsel (MPC) as a 10 C.F.R. § 2.309(e) discretionary intervenor (10/5/5);²

¹ This time allocation designation indicates the total argument time provided for AUE and each of the other two participants who filed answers to the AUE motion, beginning with AUE as the movant. Thus, the allocation "20/15/5" provides twenty minutes for AUE, fifteen minutes for joint petitioners Missouri Coalition for the Environment and Missourians for Safe Energy, and five minutes for the NRC staff. At the beginning of the argument on this matter, AUE will be asked to specify how much of its total allotted time it wishes to reserve for rebuttal. Only one counsel/representative per participant will be permitted to make a presentation regarding this item.

² This time allocation designation (and those that follow) indicates the total argument time provided to each participant for the particular issue/contention or contention group, beginning with the petitioner involved in the issue/contention, applicant AUE, and the staff. Thus, the allocation "10/5/5" provides ten minutes for MPC, five minutes for AUE, and five minutes for the staff. For the issues or contentions in a group that is given a single time allocation (e.g., 4(a) below), each participant can decide how much of its total time allocation it wishes to use to present its argument regarding any single issue or contention in the group. Also, in the case of a petitioner, at the beginning of the argument regarding each individual matter or group, the petitioner (i.e., MPC for this issue) will be asked to specify how much of its total allotted time it wishes to reserve for rebuttal. Only one counsel/representative per participant will be permitted to make a presentation regarding any single matter or group.

Also in this regard, because the Public Service Commission of the State of Missouri (PSCM) has asked to participate only as an interested governmental entity pursuant to 10 C.F.R. § 2.315(c), it must await the admission of parties and contentions before being afforded a formal role in connection with any of the particular issues that might be admitted as

(continued...)

3. Standing and admissibility of contention GA/A/FI-1 of petitioner Missourians Against Higher Utility Rates (MAHUR) (25/20/10);
4. The admissibility of the contentions of petitioners Missouri Coalition for the Environment and Missourians for Safe Energy (MCE/MSE), in the following sequence:
 - a. NEPA-1 and SAFETY-1 (formerly Contentions 1 and 2) (10/5/5);
 - b. NEPA-2 and NEPA-3 (formerly Contentions 3 and 4) (30/15/15);
 - c. NEPA-4 and NEPA-5 (formerly Contentions 5 and 6) (20/10/10);
 - d. NEPA-7 (formerly Contention 8) (10/5/5); and
 - e. NEPA-6, NEPA-8, MISC-1, NEPA-9 (formerly Contentions 7, 9, 10, and 11) (10/5/5).

In making their arguments, the participants should bear in mind that the members of the Licensing Board will have read their pleadings. As such, they should focus their presentations on the critical points in controversy as those issues have emerged as a result of the various participant filings.³

C. Electronic Copy of COL Application for Callaway Plant Unit 2

The Licensing Board requests that applicant AUE send the Licensing Board members by postal or other delivery service (i.e., not through the agency's E-Filing system) copies of the publicly available portions of the AUE COL application for Callaway Plant Unit 2 in an electronic

²(...continued)

contentions in the proceeding. Nonetheless, the Board encourages PSCM counsel to attend the hearing as they may, to the degree questions arise, be able to assist the Board during the prehearing conference to better understand, for instance, what have been described in the pleadings as the PSCM "integrated resource planning" process and the PSCM-administered "renewable portfolio standard."

³ If any of the participants require any special audio/visual equipment for making their July 28 argument presentations (e.g., projector, screen), they should contact Licensing Board Panel information technology specialist Joseph Deucher ((301) 938-9638 or joseph.deucher@nrc.gov) and apprise him of those needs on or before Monday, July 13, 2009.

format (DVD or CD).⁴ To the degree practicable, the Board requests that the copies include active links that will allow quick access to major portions of the application through a central table of contents. The Board asks that the electronic copies be sent by a method that will allow the Board to receive them on or before Friday, July 17, 2009. Additionally, the Board asks that for any request received from the counsel/representative of any of the petitioners and/or the staff by AUE counsel on or before 4:30 p.m. Eastern Time on Monday, July 13, 2008, AUE provide to that participant by postal or other delivery service (i.e., not through the agency's

⁴ The Board requests that three electronic copies of the application be sent to Board Chairman Bollwerk, and one copy be sent to Judge Jeffries. If sent by regular mail, the copies directed to Judge Bollwerk should be sent to the address used on the service list for this issuance. If sent by overnight or other expedited delivery method, the copies directed to Judge Bollwerk should be sent to the following address:

Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Third Floor, Two White Flint North
11545 Rockville Pike
Rockville, MD 20852-2738

For Judge Jeffries, whatever delivery method is used, the copy should be sent to:

104 Torrey Pines Dr.
Cary, North Carolina 27513-3437

Contact Number: 919-481-4578

E-Filing system) for receipt on or before Friday, July 17, 2009, an electronic copy of the Callaway COL application identical to that provided to the Board.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD⁵

/RA/

G. Paul Bollwerk, III
CHAIRMAN

Rockville, Maryland

July 7, 2009

⁵ 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)
)
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 (PERMITTING REPLY TO RESPONSES TO MOTION TO TERMINATE HEARING; PREHEARING CONFERENCE ARGUMENT TIME ALLOCATIONS; ELECTRONIC COPY OF APPLICATION) have been served upon the following persons by Electronic Information Exchange.

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Docket No. 52-037-COL

LB MEMORANDUM AND ORDER (PERMITTING REPLY TO RESPONSES TO MOTION TO TERMINATE HEARING; PREHEARING CONFERENCE ARGUMENT TIME ALLOCATIONS; ELECTRONIC COPY OF APPLICATION)

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[Original signed by Evangeline S. Ngbea]

Office of the Secretary of the Commission

Dated at Rockville, Maryland
this 7th day of July 2009