

July 10, 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

**Joint Motion By AmerenUE, NRC Staff, MCE/MSE, MAHUR,
and MPC Requesting Leave To File A Motion For Reconsideration And Requesting
Reconsideration**

Pursuant to 10 C.F.R. § 2.323(e), Union Electric Company d/b/a AmerenUE (“AmerenUE”), the Missouri Coalition for the Environment and Missourians for Safe Energy (“MCE/MSE), Missourians Against Higher Utility Rates (“MAHUR”), the Missouri Office of the Public Counsel (“MPC”) and the NRC Staff (collectively “Joint Movants”) hereby jointly request that the Atomic Safety and Licensing Board (“Board”) grant Joint Movants leave to file a motion for reconsideration, and grant reconsideration, of that portion of its July 7, 2009 Memorandum and Order (“Memorandum and Order”) scheduling oral argument for July 28, 2009 on the admission of contentions and the standing of petitioners in this proceeding. The Missouri Public Service Commission (“MPSC”) – the only other petitioner in this proceeding – does not oppose this Joint Motion.

As set forth below, Joint Movants believe there are compelling circumstances for the Board to reconsider its decision to hold oral argument on standing and contention admissibility issues. Given AmerenUE’s pending motion to terminate the hearing, the fact that neither the NRC Staff nor any of the petitioners in this proceeding objects to termination of the hearing, and

the fact that none of the Joint Movants has suggested that oral argument on standing or contentions is either necessary or appropriate, Joint Movants respectfully submit that a prehearing conference in Fulton, Missouri to hear oral argument on issues regarding standing and the admissibility of contentions would result in a costly and unnecessary use of the participants' and the NRC's resources. To the extent that any oral argument is necessary (for example on conditions proposed by MCE/MSE), such argument can be done telephonically, saving the Board, the NRC Staff, AmerenUE and the petitioners the need to travel to Fulton, Missouri.

BACKGROUND

This proceeding involves an application (the "COLA"), submitted by AmerenUE on July 24, 2008, for a combined license to construct and operate a new nuclear plant at the site of AmerenUE's Callaway Power Plant located in Callaway County, Missouri. In AmerenUE's May 1, 2009 answers to intervention and hearing requests filed in this proceeding, AmerenUE explained to the Board that it was suspending its efforts to build a new nuclear power plant in Missouri. AmerenUE also explained to the Board that it had requested the NRC Staff to continue its review of the COLA, while AmerenUE reviewed its options. AmerenUE pledged to keep the Board informed of the status of that internal review.¹

On June 26, 2009, AmerenUE filed a Motion requesting that the Board terminate the hearing in this proceeding ("Termination Motion"). Implicit in the Termination Motion was a request that the hearing be terminated prior to oral argument on standing and admissibility since, as the Termination Motion explained, AmerenUE had determined that it was in its best interest to suspend its pursuit of the COLA. The Termination Motion added that AmerenUE had requested the NRC Staff to suspend all activities relating to the COLA. By letter dated June 29, 2009, the

¹ See, e.g., "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) at 3.

NRC Staff agreed to AmerenUE's request, stating that it "has suspended all review activities relating to the Callaway Unit 2 COLA" ² Counsel for NRC Staff forwarded that letter to the Board and the petitioners on June 30, 2009.

As set forth in the Termination Motion, MPSC and MPC did not oppose AmerenUE's request to terminate the hearing. MAHUR did not file an answer to the Termination Motion (and has since informed counsel for AmerenUE that MAHUR does not oppose termination of the hearing as requested by the Termination Motion and that, should this Joint Motion be granted, MAHUR would not intend to participate in any oral argument regarding that Motion). The NRC Staff filed an "Answer in Support of AmerenUE's Motion to Terminate Hearing," setting out its position that the Board has the authority to grant the Termination Motion, and specifically stating that it would be appropriate to cancel the oral argument on petitioners' standing and the admissibility of proposed contentions scheduled for July 28, 2009. ³ MCE/MSE filed a "Response by MCE/MSE to AmerenUE's Motion Requesting Termination of Hearing" which stated that they "support the motion to terminate the proceeding." ⁴ MCE/MSE's Response also stated their position that the Board has the authority to terminate, ⁵ and requested that the Board either "dismiss AmerenUE's COLA" or alternatively impose certain conditions if termination of the hearing is granted but the COLA is not withdrawn. ⁶

In summary, no participant in this proceeding opposes termination of the hearing. No participant has asked the Board to proceed with oral argument regarding issues of standing or

² Letter from David B. Matthews, Director, Division of New Reactor Licensing (NRC) to Adam C. Heflin, Senior Vice President and Chief Nuclear Officer, AmerenUE/Callaway Plant (June 29, 2009) at 1.

³ NRC Staff's Answer In Support Of AmerenUE's Request To Terminate Hearing (July 6, 2009) at 9.

⁴ Response Of MCE/MSE To AmerenUE's Motion Requesting Termination Of Hearing (July 6, 2009) at 1.

⁵ Id. at 1-3.

⁶ Id. at 3-6.

contention admissibility. No participant has suggested that suspension of the hearing (rather than its termination) is desired or appropriate.

DISCUSSION

A. Request For Leave To File Motion For Reconsideration

In its July 7, 2009 Memorandum and Order, the Board set forth a schedule for oral argument to be held on July 28, 2009 in Fulton, Missouri. The Memorandum and Order stated that the Board will hear arguments at that time regarding the Termination Motion. In addition, the Memorandum and Order stated that it will at the same time hear oral argument regarding (1) the admission of MPC as a discretionary intervenor; (2) the standing of MAHUR; (3) the admissibility of MAHUR's proposed contention; and (4) the admissibility of the eleven contentions proposed by MCE/MSE. The Memorandum and Order did not address why oral argument regarding petitioners' standing and the admissibility of contentions was necessary at this time, given AmerenUE's unopposed Termination Motion.

Joint Movants believe that compelling circumstances exist which merit the Board granting leave to file this reconsideration request under 10 C.F.R. 2.323(e). As set forth in the Termination Motion, AmerenUE has made the business decision not to further pursue the COLA at this time. The NRC Staff has agreed to suspend its review of the COLA. No participant opposes termination of the hearing. Under these circumstances, the Board should not require the Joint Movants to devote the substantial time and resources, and incur the significant expenses, that would be necessary to prepare for, travel to, and participate in, oral argument regarding the standing and admissibility issues. The Joint Movants therefore respectfully request that the Board grant Joint Movants leave to seek reconsideration of that part of its Memorandum and Order convening an oral argument in Fulton, Missouri on July 28 to address standing and contention admissibility.

B. Motion For Reconsideration

For the reasons set forth in Section A of this Motion, Joint Petitioners respectfully request that, in the interest of efficiency and conserving the participants' resources, the Board reconsider its decision to hold oral argument on the standing and admissibility issues. As argued above, Joint Movants submit that where (1) the applicant has decided not to pursue the COLA at this time; and (2) petitioners see no reason for the Board to address standing or the admissibility of their contentions while an unopposed motion to terminate is pending, holding oral argument on those issues could result in a substantial waste of the parties' resources. Such a result would be inconsistent with Commission policy to "enhance the efficiency and effectiveness of NRC adjudications." Model Milestones for NRC Adjudicatory Hearings, 70 Fed. Reg. 20,457, 20,458 (Apr. 20, 2005).

Moreover, given the pendency of the unopposed Termination Motion, reconsideration by the Board of its decision to conduct oral argument on standing and admissibility issues is within the Board's broad discretion "to take appropriate action to control the prehearing and hearing process," including the power to regulate the course of the proceeding, dispose of motions, and set procedural schedules as it sees fit. See 10 C.F.R. § 2.319. As the Commission has found, proper "[c]ase management by ... Licensing Boards is an essential element of a fair, efficient hearing process." Changes to Adjudicatory Process, 69 Fed. Reg. 2,182, 2,183 (Jan. 14, 2004).

Joint Movants emphasize that they are not requesting reconsideration of that portion of the Memorandum and Order scheduling oral argument on the Termination Motion. Indeed, AmerenUE intends to file a Reply to the Responses filed by the NRC Staff and MCE/MSE by the July 13 deadline established in the Memorandum and Order. Nor do Joint Movants have any

objection to oral argument as to the conditions requested in MCE/MSE's Response if the COLA is not withdrawn.⁷

With these considerations in mind, if the Board grants this Joint Motion and the Termination Motion is the only matter scheduled for oral argument, Joint Petitioners respectfully request that the Board consider conducting that oral argument via telephonic conference, in order to save the participants the cost of traveling to Missouri to address that more limited issue. MAHUR would not expect to participate in that oral argument.

⁷ As AmerenUE has informed MCE/MSE, AmerenUE agrees with the "Conditions of Termination" proposed by MCE/MSE on pages 5-6 of its Response (i.e., in the event that the COLA is reactivated, the NRC Staff would publish a new notice of opportunity for hearing and the notice should be served on all parties on the current service list, and neither existing or new contentions nor existing or new parties would be subject to rules for untimely contentions or interventions other than those normally associated with new notices of opportunity for hearing), except for MCE/MSE's request for litigation expenses, including attorneys' fees. AmerenUE does object to MCE/MSE's request that the Board order withdrawal of the COLA. Both of those issues will be addressed in AmerenUE's July 13 reply. MAHUR concurs with the agreement between AmerenUE and MCE/MSE described above.

CONCLUSION

For the foregoing reasons, the Joint Movants respectfully request that the Board (1) grant Joint Petitioners leave to seek reconsideration of the Memorandum and Order; and (2) reconsider its decision in the Memorandum and Order to conduct oral argument on the standing and admissibility issues. In addition, if the Board deems it necessary to hear oral argument on the Termination Motion, Joint Movants respectfully request that such oral argument be held telephonically.

Respectfully submitted,

/signed electronically by Jay E. Silberg/

Jay E. Silberg
Michael G. Lepre
Pillsbury Winthrop Shaw Pittman LLP
2300 N Street, NW
Washington, DC 20037-1128
Telephone: (202) 663-8000
Facsimile: (202) 663-8007
e-mail: jay.silberg@pillsburylaw.com
Counsel for Union Electric Company d/b/a
AmerenUE

Henry B. Robertson (Mo. Bar No. 29502)
Bruce A. Morrison (Mo. Bar No. 38359)
Great Rivers Environmental Law Center
705 Olive Street, Suite 614
St. Louis, MO 63101
Telephone: (314) 231-4181
Facsimile: (314) 231-4184
email: hrobertson@greatriverslaw.org
bamorrison@greatriverslaw.org
Attorneys for MCE and MSE

Ann P. Hodgdon
Jessica A. Bielecki
Counsel for NRC Staff
U.S. Nuclear Regulatory Commission
Mail Stop O15 –D21
Washington, DC 20555-0001
Telephone: (301) 415-1587
email: Ann.Hodgdon@nrc.gov
Jessica.Bielecki@nrc.gov

Hubert A. Farbes, Jr.
John A. Helfrich
Brownstein Hyatt Farber Schreck, LLP
410 Seventeenth Street, Suite 2200
Denver, CO 80202
Telephone: (303) 223-1100
Facsimile: (303) 223-1111
email: hfarbes@bhfs.com
Attorneys for Petitioner Missourians
Against Higher Utility Rates

Lewis Mills
Public Counsel
Office of the Public Counsel
P.O. Box 2230
Jefferson City, MO 65102
Telephone: (573) 751-4857
email: lewis.mills@ded.mo.gov

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CERTIFICATE OF SERVICE

I hereby certify that, on this 10th day of July, 2009, a copy of the foregoing "Joint Motion By AmerenUE, NRC Staff, MCE/MSE, MAHUR and MPSC Requesting Leave To File A Motion For Reconsideration And Requesting Reconsideration" dated July 10, 2009, was provided to the Electronic Information Exchange for service upon the following persons:

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

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

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

Office of the Secretary of the Commission
U.S. Nuclear Regulatory Commission
Mail Stop O-16C1
Washington, DC 20555-0001
Attn: Rulemakings and Adjudications Staff
Hearing Docket
E-mail: secy@nrc.gov;
hearingdocket@nrc.gov

U.S. Nuclear Regulatory Commission
Office of the General Counsel
Mail Stop - O-15 D21
Washington, DC 20555-0001
Kathryn Winsberg, Esq.
Ann Hodgdon, Esq.
Adam Gendelman, Esq.
Jessica Bielecki, Esq.
Sara Kirkwood, Esq.
Joseph Gilman, Paralegal
E-mail: klw@nrc.gov; ann.hodgdon@nrc.gov;
adam.gendelman@nrc.gov; jab2@nrc.gov;
jsg1@nrc.gov; seb2@nrc.gov

Noranda Aluminum, Inc.
Finnegan, Conrad & Peterson, L.C.
428 E. Capitol Avenue, Suite 300
Jefferson City, MO 65101
David Woodsmall, Esq.
E-mail: dwoodsmall@fcplaw.com

Noranda Aluminum, Inc.
Brownstein Hyatt Farber Schreck, LLP
410 17th Street, Suite 2200
Denver, CO 80202-4432
Hubert A. Farbes, Jr., Esq.
John A. Helfrich
E-mail: hfarbes@bhfs.com

Missourians Against Higher Utility Rates
Brownstein Hyatt Farber Schreck, LLP
410 17th Street, Suite 2200
Denver, CO 80202-4432
Hubert A. Farbes, Jr., Esq.
E-mail: hfarbes@bhfs.com

Missouri Public Service Commission
200 Madison Street, Suite 800
P.O. Box 360
Jefferson City, MO 65101
Kevin A. Thompson, General Counsel
Steven Dottheim, Deputy General Counsel
E-mail: kevin.thompson@psc.mo.gov
E-mail: steve.dottheim@psc.mo.gov

Missouri Coalition for the Environment
Great Rivers Environmental Law Center
705 Olive St., Suite 614
St. Louis, MO 63101-2208
Henry B. Robertson, Esq.
E-mail: hrobertson@greatriverslaw.org

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

/signed electronically by Jay E. Silberg/
Jay E. Silberg
PILLSBURY WINTHROP SHAW PITTMAN LLP
2300 N Street, NW
Washington, DC 20037-1128
Telephone: (202) 663-8000
Facsimile: (202) 663-8007
E-mail: jay.silberg@pillsburylaw.com

Counsel for Union Electric Company d/b/a AmerenUE