

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

LBP-09-23

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

August 28, 2009

MEMORANDUM AND ORDER
(Approving Settlement Agreement and
Terminating Contested Adjudicatory Proceeding)

Before the Licensing Board is an August 14, 2009 joint motion by applicant Union Electric Company d/b/a AmerenUE (AUE), the Nuclear Regulatory Commission (NRC) staff, and petitioners Missouri Coalition for the Environment and Missourians for Safe Energy (MCE/MSE), Missourians Against Higher Utility Rates (MAHUR), and the Missouri Office of the Public Council (MPC), seeking approval pursuant to 10 C.F.R. § 2.338(i) of an accompanying settlement agreement that would (at least for the time being) bring to an end the contested adjudicatory hearing associated with this 10 C.F.R. Part 52 combined license (COL) proceeding.¹ Finding that the participants' settlement agreement is consistent with the content and form provisions of section 2.338(g)-(h) and, in accord with section 2.338(i), is in the public interest, the Board approves their agreement and terminates this contested hearing.

¹ See Joint Motion of [AUE], NRC Staff, MCE/MSE, MAHUR, and MPC Requesting Approval of Settlement Agreement and Termination of Contested Portion of Hearing (Aug. 14, 2009) [hereinafter Joint Settlement Motion].

I. BACKGROUND

On July 24, 2008, AUE applied under Part 52 for a COL that would authorize the construction and operation of a new nuclear power reactor utilizing the U.S. Evolutionary Power Reactor (EPR) design at the site in Callaway County, Missouri, currently housing its existing nuclear reactor, Callaway Plant Unit 1. Pursuant to a January 29, 2009 hearing opportunity notice,² two separate hearing requests were filed on April 6, 2009, challenging the AUE COL application (COLA), one jointly by petitioners MCE/MSE,³ and one by petitioner MAHUR.⁴ In addition, on that same date, governmental entities MPC and the Public Service Commission of the State of Missouri (PSCM) requested that they be granted discretionary intervention pursuant to 10 C.F.R. § 2.309(e), with the latter also seeking leave to participate as an interested governmental entity in accordance with 10 C.F.R. § 2.315(c).⁵

² See [AUE]; 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 [COL] for the Callaway Plant Unit 2, 74 Fed. Reg. 6064 (Feb. 4, 2009).

³ See Petition to Intervene and Request for Hearing in Callaway Plant Unit 2 Combined Construction and Operating License Application (Apr. 6, 2009).

⁴ See Petition to Intervene and Request for Hearing by [MAHUR] (Apr. 6, 2009).

⁵ See Petition to Intervene in Docket No. 52-037, AmerenUE Callaway 2 Nuclear Power Plant Combined Construction and License Application (Apr. 6, 2009); Petition for Leave to Intervene as an Interested State, or, in the Alternative, Petition for Discretionary Intervention (Apr. 6, 2009). PSCM subsequently withdrew its request for discretionary intervention. See [PSCM] Reply to NRC Staff's Answer and [AUE] Answer to [PSCM] Petition for Leave to Intervene as an Interested State, or, in the Alternative, Petition for Discretionary Intervention (May 15, 2009) at 2.

By memorandum dated April 23, 2009,⁶ the NRC Secretary referred these petitions to the Chief Administrative Judge who, in turn, assigned them to this Licensing Board for adjudication.⁷ On May 1, 2009, AUE and the staff filed answers to the various petitions,⁸ to which MCE/MSE, MAHUR, MPC, and PSCM filed replies on May 15.⁹

At the same time as AUE and the staff were preparing their responsive filings to the various hearing petitions, the Board became aware of a public statement issued by AUE President and Chief Executive Officer Thomas R. Voss. That statement announced AUE's intention to suspend its efforts to build the new Callaway unit in light of the apparent unwillingness of the Missouri legislature to provide AUE with a construction work in progress (CWIP) authorization that would permit AUE to collect from ratepayers some portion of the costs

⁶ See Memorandum from Annette L. Vietti-Cook, NRC Secretary, to E. Roy Hawken, Chief Administrative Judge, Atomic Safety and Licensing Board Panel (Apr. 23, 2009).

⁷ See [AUE]; Establishment of Atomic Safety and Licensing Board, 74 Fed. Reg. 20,355 (May 1, 2009).

⁸ See [AUE] Answer Opposing the [MCE/MSE] Petition to Intervene and Request for Hearing in Callaway Plant Unit 2 [COLA] (May 1, 2009) [hereinafter AUE Answer to MCE/MSE Petition]; [AUE] Answer Opposing Petition to Intervene and Request for Hearing by [MAHUR] (May 1, 2009); [AUE] Answer Opposing the [MPC] Petition to Intervene in Docket No. 52-037, [AUE] Callaway 2 Nuclear Power Plant [COLA] (May 1, 2009); [AUE] Answer to the [PSCM] Petition for Leave to Intervene as an Interested State, or, in the Alternative, Petition for Discretionary Intervention (May 1, 2009); NRC Staff Answer to Petition to Intervene and Request for Hearing in Callaway Plant Unit 2 [COLA] (May 1, 2009); NRC Staff Answer to Petition to Intervene and Request for Hearing by [MAHUR] (May 1, 2009); NRC Staff Answer to "Petition to Intervene in Docket No. 52-037, [AUE] Callaway 2 Nuclear Power Plant [COLA]" Submitted by the [MPC] and "Petition for Leave to Intervene as an Interested State, or, in the Alternative, Petition for Discretionary Intervention" Submitted by the [PSCM] (May 1, 2009).

⁹ See Reply of MCE/MSE (May 15, 2009); Reply of [MAHUR] to [AUE] Answer Opposing Petition to Intervene (May 14, 2009); [MPC's] Reply to Answers (May 15, 2009); [MPC] Reply to NRC Staff's Answer and [AUE] Answer to [PSCM] Petition for Leave to Intervene as an Interested State, or, in the Alternative, Petition for Discretionary Intervention (May 15, 2009).

of construction prior to actual operation of the new Callaway unit.¹⁰ As a consequence, on April 27, 2009, the Board asked that, in conjunction with their answers to the petitions, AUE and the staff “address the current status of, and the schedule for staff review associated with, the AUE application at issue in this proceeding.”¹¹

In responding to the Board’s request, the staff stated that it would “continue to review the Callaway application consistent with existing and planned resource availability,” and that the “Applicant requested that the NRC continue reviewing” the COLA.¹² For its part, AUE indicated in its responses to the various petitions that it was “sensitive to the fact that continuation of the review of the COLA impacts the NRC resources” and was committed to “keep the Board, the Staff, the Commission, and any admitted intervenors informed of the status of [AUE]’s internal review.”¹³ With these responses in hand, as well as a May 13, 2009 letter from AUE counsel advising the Board of certain conflicts relative to the potential schedule for an initial prehearing conference,¹⁴ in a May 20, 2009 issuance, the Board scheduled an initial prehearing conference to hear argument on the admissibility of the various intervention petitions for July 28, 2009, in Fulton, Missouri.¹⁵

¹⁰ See Licensing Board Memorandum and Order (Initial Prehearing Order) (Apr. 27, 2009) at 4-5 (unpublished) (citing Media Release, [AUE] Requests Sponsors to Withdraw Missouri Clean and Renewable Energy Construction Bills in General Assembly (Apr. 23, 2009), <http://ameren.mediaroom.com/index.php?s=43&item=634>).

¹¹ Id. at 5.

¹² Letter from Ann Hodgdon, Staff Counsel, to Licensing Board (May 1, 2009). By letter dated May 5, 2009, the staff provided the Board with the letter it had sent to AUE stating the same. See Letter from Ann Hodgdon, Staff Counsel, to Licensing Board (May 5, 2009).

¹³ E.g., AUE Answer to MCE/MSE Petition at 3.

¹⁴ See Letter from Jay E. Silberg, AUE Counsel, to Licensing Board (May 13, 2009).

¹⁵ See Licensing Board Memorandum and Order (Initial Prehearing Conference
(continued...))

Thereafter, by motion filed June 26, 2009, AUE asked that the adjudicatory hearing in this COL proceeding be terminated.¹⁶ In its motion, AUE stated it had “determined that it is in [AUE’s] best interests to suspend review of the COLA, and requested that the NRC Staff suspend all activities relating to the COLA by letter dated June 23, 2009 Accordingly, [AUE] requests that the Board terminate the hearing in this proceeding.”¹⁷ Having agreed to suspend its review of AUE’s COLA,¹⁸ the staff filed a July 6, 2009 answer to AUE’s motion supporting the AUE request.¹⁹ In the only other response to the AUE termination motion, joint petitioner MCE/MSE declared it did not oppose a hearing termination order, which it asserted should include either (1) dismissal of the AUE COLA so as to terminate further staff review; or (2) certain conditions, including (a) assurance that reactivation of the staff’s COLA review would cause the agency to issue a new hearing notice and provide notification to the individual petitioner, (b) acceptance of new contentions filed consistent with the hearing notice as timely, with no requirement that new parties meet late intervention requirements, and (c) the payment of MCE/MSE litigation expenses, including attorney fees, accrued to date.²⁰

When the Board indicated in a July 7, 2009 issuance that it would add the motion to terminate to the various other issues to be addressed by the parties at the July 28 initial

¹⁵(...continued)

Schedule; Notice of Need for More Time; Schedule for Adoption of Contentions; Entry of Appearance; Opportunity for Written Limited Appearance Statements) (May 20, 2009) at 1-2 (unpublished).

¹⁶ See Motion of [AUE] Requesting Termination of Hearing (June 26, 2009).

¹⁷ Id. at 2.

¹⁸ Letter from Ann Hodgdon, Staff Counsel, to Licensing Board (June 30, 2009).

¹⁹ NRC Staff’s Answer in Support of [AUE] Request to Terminate Hearing (July 6, 2009).

²⁰ See Response of MCE/MSE to [AUE] Motion Requesting Termination of Hearing (July 6, 2009) at 2-6.

prehearing conference,²¹ the participants responded with a joint motion asking the Board to (1) reconsider its July 7 directive and cancel the oral argument/prehearing conference as it related to the questions of participant standing and contention admissibility; and (2) hold a limited telephone oral argument, only if the Board deemed it necessary, on the subject whether to grant the AUE termination motion.²² In a July 16, 2009 memorandum and order, the Board noted that an approach whereby the Board would place the adjudicatory proceeding in suspension after hearing argument regarding, and then ruling on, the validity of the pending intervention petitions, appeared consistent with the staff's determination to permit the AUE COLA to remain docketed, but to suspend any further staff technical consideration.²³ The Board also indicated, however, that, given the participants' apparent agreement concerning most of the conditions associated with terminating the adjudicatory hearing, it would postpone the prehearing conference and provide the participants with an opportunity to submit a settlement agreement outlining the terms under which they would propose that a consent order terminating the proceeding be entered.²⁴

The pending joint motion to accept a settlement agreement reflects the efforts of the participants in response to this July 16 Board order.

²¹ See Licensing Board Memorandum and Order (Permitting Reply to Responses to Motion to Terminate Hearing; Prehearing Conference Argument Time Allocations; Electronic Copy of Application) (July 7, 2009) at 1-2 (unpublished).

²² See Joint Motion by AUE, NRC Staff, MCE/MSE, MAHUR, and MPC Requesting Leave to File a Motion for Reconsideration and Requesting Reconsideration (July 10, 2009) at 5-6 [hereinafter Joint Reconsideration Motion].

²³ See Licensing Board Memorandum and Order (Postponing Initial Prehearing Conference and Setting Schedule for Submission of Settlement Agreement) (July 16, 2009) at 2-3 (citing Joint Reconsideration Motion at 6 n.7) [hereinafter Board Settlement Agreement Submission Order].

²⁴ See id. at 3-5.

II. ANALYSIS

As is reflected in 10 C.F.R. § 2.107(a), when an applicant decides it no longer wishes to have the agency evaluate its application, the usual approach is for the applicant to request that the agency permit it to withdraw its licensing request.²⁵ Such a termination would, of course, end all agency consideration of the matter, including any staff technical review and any adjudicatory proceeding, either as to contested matters raised by any intervenors or any uncontested/mandatory hearing that might be required.

That is not the approach applicant AUE has taken in this instance, choosing instead to seek to have the application stay docketed with the staff while trying to terminate the adjudicatory forum in which its COLA is also subject to review. And as it turns out, the various petitioners who wish to challenge the Callaway COLA apparently have concluded that allowing the application to remain pending before the staff -- but not before a licensing board -- meets their current expectations as well. They have, however, reached an accord with AUE and the staff in this regard based on certain agreed terms that are set forth as Exhibit 1 to this decision, and about which the Board notes the following:

A. Renoticing Contested Portion of the Proceeding

As is reflected in clause 2 of the settlement agreement, in the event AUE, or any other entity, at some point in the future decides to revive the Callaway COLA by requesting that the staff resume its technical review of the application, the staff agrees to use its “best efforts” to

²⁵ In an instance, such as this one, in which a hearing notice has been issued, see 74 Fed. Reg. at 6064, the withdrawal would be subject to “such terms as the presiding officer may prescribe.” 10 C.F.R. § 2.107(a).

see that the Commission will issue a new hearing opportunity notice.²⁶ This provision, which undoubtedly is of central importance to the petitioners, appears to be based on the participants' agreed assessment of the degree to which the staff can provide assistance in securing the renoticing of a contested hearing opportunity relative to the Callaway COLA.²⁷ In this regard, the agency's practice concerning the issuance of hearing opportunity notices in reactor licensing cases varies, with the staff sometimes issuing such hearing notices,²⁸ while other hearing opportunity notices are issued by the Commission.²⁹ The notice here having been issued in the

²⁶ Exh. 1, at 2.

²⁷ Certainly, the Board's ability to provide the petitioners anything further in this regard is problematic. Whatever authority a licensing board might have to order the renoticing of a licensing proceeding pending before it, see Rochester Gas & Elec. Corp. (R.E. Ginna Nuclear Plant, Unit 1), LBP-83-73, 18 NRC 1231, 1233 (1983), in an instance in which an adjudicatory proceeding has been terminated before a licensing board pursuant to a settlement agreement, the board loses its jurisdiction over, and thus its authority to act with respect to, that licensing action. See Eastern Testing & Inspection, Inc. (Order Suspending Byproduct Material License Nos. 29-09814-01 & 29-09814-02), LBP-96-11, 43 NRC 279, 282 n.1 (1996). Thus, given this Board will have no remaining role in this COL proceeding once the contested hearing is terminated because it is not empowered to conduct the mandatory hearing associated with the Callaway COLA, see infra note 38, if the previously-terminated contested hearing is subsequently renoticed, a new licensing board would need to be established to preside over the renoticed litigation.

Also with respect to the Board's authority in this instance, given the participants' settlement agreement, we see no cause for the Board to attempt to obtain Commission avowal of the renoticing process contemplated by the participants, either by way of a staff inquiry made at the Board's direction, see 10 C.F.R. § 2.338(e), or via a certified question, see id. § 2.319(l). Of course, the section 2.341(a)(2) sua sponte review process that applies to this Board determination, see id. § 2.338(i), affords the Commission the opportunity to correct any participant or Board misapprehensions regarding the renoticing process (or any other items) contemplated in the settlement agreement.

²⁸ See Notice of Acceptance for Docketing of the Application and Notice of Opportunity for Hearing Regarding Renewal of Facility Operating License Nos. NPF-41, NPF-51, and NPF-74 for an Additional 20-Year Period; Arizona Public Service Company; Palo Verde Nuclear Generating Station, Units 1, 2, and 3, 74 Fed. Reg. 22,978, 22,981 (May 15, 2009) (signed by Director, Division of License Renewal, Office of Nuclear Reactor Regulation).

²⁹ See id. at 6067 (Callaway COL hearing notice signed by NRC Secretary). One
(continued...)

first instance by the Commission, this settlement agreement clause apparently reflects the participants' considered judgment that, absent some delegation of authority to the staff to renotify this proceeding, a new hearing opportunity notice regarding the Callaway COLA will need to come from the Commission, which is the renoticing process this settlement agreement clause seeks to advance.³⁰

B. Standing

Settlement agreement clause 8 regarding standing indicates that, in the event a contested hearing for the Callaway COLA is renoticed, relative to any hearing petition filed by MAHUR, MCE/MSE, or MPC, applicant AUE "shall not challenge" the standing of these petitioners.³¹ We note that by its terms, this provision does not apply to the staff, nor would it bind a future licensing board to make any particular determination regarding whether any of these petitioners has established its standing, either as of right or as a matter of discretion in accord with 10 C.F.R. § 2.309(d)-(e).³²

²⁹(...continued)
possible explanation for the Commission being the noticing authority in the COL cases is the need to include the additional order regarding potential party access to nonpublic information. See id. at 6065-67.

³⁰ This clause also seemingly rests on the participants' considered legal judgment that, upon reactivation of the staff technical review process for the Callaway COLA, renoticing of the contested hearing portion of this proceeding would be necessary and appropriate.

³¹ Exh. 1, at 3.

³² See 10 C.F.R. § 2.309(a), (d)(3) (in ruling on hearing request/intervention petition, licensing board will determine whether petitioner has interest affected by the proceeding); id. § 2.309(e) (in ruling on discretionary intervention request, licensing board will consider and balance enumerated factors weighing in favor of and against allowing intervention); see also Southern Nuclear Operating Co. (Vogtle Electric Generating Plant, Units 3 and 4), LBP-09-3, 69 NRC __, __ (slip op. at 7) (Mar. 5, 2009) (in assessing intervention petition, licensing board must determine whether standing elements are met even though there are no objections to petitioner's standing), appeals denied, CLI-09-16, 70 NRC __ (July 31, 2009).

C. Settlement Form and Settlement Agreement Content

The form for a settlement in a contested proceeding conducted under 10 C.F.R. Part 2 is set forth in section 2.338(g), which states that it “must be in the form of a proposed settlement agreement, a consent order, and a motion for its entry that includes the reasons why it should be accepted.” Also, the settlement must be signed by the consenting parties or their authorized representatives. As is evident from the motion and the accompanying settlement agreement exhibit, all these form prerequisites have been fulfilled.³³

As to the content of a settlement agreement in such a contested proceeding, what the agreement “must” contain is governed by section 2.338(h), which specifies four items. In this instance, we find the agreement provided by the participants fulfills each of the elements in paragraph (h) in that its provisions include (1) an admission of all jurisdictional facts;³⁴ (2) an express waiver of further procedural steps before the presiding officer, of any right to challenge the validity of any order entered into in accord with the agreement, and of all rights to seek

³³ Although authorized representatives for AUE, the staff, MCE/MSE, MAHUR, and MPC all signed the agreement, as is reflected in the exhibit attached to the participants’ motion residing in the agency’s electronic hearing docket for this proceeding, see Joint Settlement Motion, exh. 1, at 4, for the purpose of this memorandum and order, we have included only the terms of the agreement without the various signature pages.

With respect to authorized participant execution of the agreement, we also note that while the settlement agreement is not executed by a PSCM representative, the joint motion nonetheless indicates that petitioner PSCM “does not oppose” the motion. Joint Motion at 1. This is consistent with our previous observation that even though, as a potential section 2.315(c) interested governmental entity rather than a potential party to the proceeding, PSCM would not have a formal role in the proceeding absent the admission of parties and contentions, we nonetheless expected that PSCM would be kept appropriately apprised of the other participants’ settlement efforts. See Board Settlement Agreement Submission Order at 4 n.3 (citing Pa’ina Hawaii, LLC (Materials License Application), CLI-06-18, 64 NRC 1, 7 (2006)).

³⁴ See Exh. 1, at 2 (cl. 1). We also note that, in accord with section 2.338(i), a notice of hearing having been issued by the Commission in this COL proceeding, see 74 Fed. Reg. at 6064, the Board has jurisdiction to approve this settlement agreement.

judicial review or otherwise contest the validity of this consent order;³⁵ (3) a statement that this consent order has the same force and effect as an order made after a full hearing;³⁶ and (4) a statement that matters identified in the agreement, required to be adjudicated, have been resolved by the agreement and consent order.³⁷

D. Public Interest Considerations

In accord with 10 C.F.R. § 2.338(i), we find that, by its terms, the settlement agreement attached as Exhibit 1 to this decision is consistent with the public interest and is appropriate so as to be binding in this proceeding.

III. CONCLUSION

In accord with 10 C.F.R. § 2.338(g)-(i), the Board has reviewed the proposed settlement agreement among participants AUE, the staff, MCE/MSE, MAHUR, and MPC to determine whether the settlement form and content are appropriate and whether approval of the agreement and termination of this contested adjudicatory hearing are consistent with the public interest. Based on that review, the Board has concluded that (1) the settlement content and form are appropriate; and (2) the participants' agreement is in the public interest. Accordingly, we grant the joint motion of AUE, the staff, MCE/MSE, MAHUR, and MPC to approve the

³⁵ See Exh. 1, at 3 (cl. 9).

³⁶ See id. (cl. 10).

³⁷ See id. (cl. 11).

settlement agreement and terminate the contested hearing portion of this agency licensing proceeding regarding the AUE COLA for Callaway Unit 2.³⁸

For the foregoing reasons, it is this twenty-eighth day of August 2009, ORDERED, that:

1. The August 14, 2009 joint motion of AUE, the staff, MCE/MSE, MAHUR, and MPC is granted and we approve their August 14, 2009 "Settlement Agreement," which is attached as Exhibit 1 to, and incorporated by reference in, this memorandum and order.

2. Commission review of this settlement agreement, as approved by the Board, shall be conducted in accordance with 10 C.F.R. § 2.341.

³⁸ In accord with the Commission's February 4, 2009 hearing notice, see 74 Fed. Reg. at 6064, if at some point the staff's technical review goes forward, this decision dismissing the contested adjudication relating to the Callaway COL has no impact on the subsequent need to conduct a mandatory hearing relating to the Callaway COLA. Under current Commission policy, the Commission would preside over that uncontested adjudicatory proceeding. See Southern Nuclear Operating Co. (Early Site Permit for Vogtle ESP Site), CLI-07-24, 66 NRC 38, 38 & n.2 (2007).

3. The contested adjudicatory portion of this COL proceeding is terminated.

THE ATOMIC SAFETY
AND LICENSING BOARD³⁹

/RA/

G. Paul Bollwerk, III
CHAIRMAN

/RA/

Richard F. Cole
ADMINISTRATIVE JUDGE

/RA/

Jeffrey D. E. Jeffries
ADMINISTRATIVE JUDGE

Rockville, Maryland

August 28, 2009

³⁹ 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.

SETTLEMENT AGREEMENT

This Settlement Agreement, dated August 14, 2009, is entered into by and between 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 Staff of the United States Nuclear Regulatory Commission ("NRC Staff") (individually a "Party" and collectively the "Parties").

WHEREAS, on July 24, 2008, AmerenUE submitted to the United States Nuclear Regulatory Commission ("NRC" or "Commission") an application seeking a combined license to construct and operate a new nuclear plant in Callaway County, Missouri ("COLA");

WHEREAS, on December 12, 2008, the NRC docketed the COLA as sufficient for review by the NRC Staff;

WHEREAS, on February 4, 2009, the NRC published a "Notice of Hearing and Opportunity to Petition for Leave to Intervene" in a proceeding (Docket No. 52-037) to consider the COLA;

WHEREAS, on April 6, 2009, MCE/MSE, MAHUR, MPC, and the Missouri Public Service Commission filed petitions requesting leave to intervene in Docket No. 52-037, which included requests for hearing submitted by MCE/MSE and MAHUR;

WHEREAS, on June 23, 2009, AmerenUE requested that the NRC Staff suspend its review of the COLA;

WHEREAS, on June 26, 2009, AmerenUE filed a motion requesting that the Atomic Safety and Licensing Board established to preside over the proceeding ("Board") terminate the hearing in Docket No. 52-037;

WHEREAS, on June 29, 2009, the NRC Staff stated that it would suspend its review of the COLA;

WHEREAS, on July 6, 2009, MCE/MSE filed a response to AmerenUE's request for termination asking, among other things, that the Board impose certain conditions in the event the Board terminates the hearing;

WHEREAS, on July 16, 2009, the Board issued a Memorandum and Order "Postponing Initial Prehearing Conference and Setting Schedule for Submission of Settlement Agreement," which provided the Parties with the opportunity to file a settlement agreement with the Board reflecting the conditions under which the hearing regarding the COLA and the pending hearing requests would be resolved:

NOW, THEREFORE, the Parties hereby agree to the following:

1. Request for Termination of Hearing. As soon as possible after the date of this Settlement Agreement, but in no event later than August 14, 2009, the Parties shall jointly submit this Settlement Agreement to the Board and shall request that the Board issue an order consenting to this Settlement Agreement in the form of Attachment 1 hereto ("Consent Order") and terminating the contested portion of the hearing established in Docket No. 52-037.
2. New Notice of Hearing. It is the understanding of the Parties that, in the event the Board terminates the contested portion of the hearing as requested pursuant to Section 1 of this Settlement Agreement, and AmerenUE, or any other entity, subsequently requests that the NRC Staff resume its review of the COLA, whether in its current form or amended, revised, modified or changed in any manner, and NRC Staff determines that the COLA is complete for docketing, the NRC Staff will use its best efforts to have the Commission issue a new Notice of Opportunity to Petition For Leave to Intervene, and AmerenUE shall, or shall cause such other entity to, provide a copy of such Notice to each person listed on the service list in Docket No. 52-037 as such list exists on the date of this Settlement Agreement.
3. Intervention in New Proceeding. No Party shall object to a request for hearing or petition for leave to intervene submitted by any other Party (or other person) in the proceeding initiated by the Notice described in Section 2 of this Settlement Agreement based on a claim that such other Party's or person's request or petition fails to satisfy the Commission's rules for timely filing, except if such request or petition is not filed within the time period for timely intervention set forth by the Notice.
4. Proposed Contentions in New Proceeding. No Party shall object to any proposed contention raised by any other Party (or other person) in the proceeding initiated by the Notice described in Section 2 of this Settlement Agreement based on a claim that such proposed contention fails to satisfy the Commission's rules for timely proposing contentions, except if such proposed contention is not filed within the time period for timely submittal of contentions set forth by the Notice.
5. No Withdrawal. In the event the Board terminates the contested portion of the hearing in Docket No. 52-037 as requested by the Parties pursuant to Section 1 of this Settlement Agreement, no Party (other than AmerenUE) shall seek withdrawal of the COLA from the NRC's docket or request that the NRC remove the COLA from the NRC's docket, except in the event that the Commission issues the Notice described in Section 2 of this Settlement Agreement.
6. No Litigation Fees. In the event the Board terminates the contested portion of the hearing in Docket No. 52-037 as requested by the Parties pursuant to Section 1 of this Settlement Agreement, no Party shall make any claim for recovery of its litigation expenses, including attorneys' fees, incurred in connection with Docket No. 52-037 prior to the date of this Settlement Agreement.
7. Joint Request. In the event the Board does not terminate the contested portion of the hearing in Docket No. 52-037 as requested by the Parties pursuant to Section 1 of this

Settlement Agreement, or terminates the contested portion of the hearing without consenting to the conditions agreed to by the Parties in Sections 2-6 of this Settlement Agreement, the Parties may file a joint request that the Commission terminate the contested portion of the hearing (if the Board has not done so) and approve any such conditions not consented to by the Board. If all Parties do not join in the request, no Party will oppose such request filed by the other Parties.

8. Standing. In any proceeding initiated by the Notice described in Section 2 of this Settlement Agreement, or in any new or renewed proceeding relating to the COLA, AmerenUE shall not challenge the standing of MAHUR, MCE/MSE or MPC. Nothing in this Section 8 or any other provision of this Settlement Agreement shall limit any Party's right to challenge the admissibility of any and all contentions proposed by MAHUR, MCE/MSE or MPC in any such proceeding.
9. Waiver Of Further Proceedings. The Parties waive further procedural steps before the Board, any right to challenge the validity of the Consent Order entered in accordance with this Settlement Agreement, and all rights to seek judicial review or otherwise contest the validity of the Consent Order.
10. Effect Of Consent Order. The Consent Order shall have the same force and effect as an order issued by the Board after a full hearing.
11. Resolution Of All Issues. The Settlement Agreement and the Consent Order resolve all issues among the Parties in Docket No. 52-037 identified in this Settlement Agreement that were required to be adjudicated.
12. Authority. Each Party hereby represents and warrants that it has the authority and is otherwise fully authorized to enter into this Settlement Agreement on its own behalf and on behalf of any other person or entity who may claim from, through, or under such Party.
13. Entire Agreement. This Settlement Agreement constitutes the entire agreement among the Parties respecting the subject matter hereof, supersedes all previous discussions, negotiations, representations, agreements concerning such matters, and shall not be changed or modified in any respect except by a signed writing executed by duly authorized representatives of the Parties.
14. Counterparts. This Settlement Agreement may be executed in any number of counterparts, each of which will be deemed to be an original, and which together constitute one and the same instrument.

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 MEMORANDUM AND ORDER (APPROVING SETTLEMENT AGREEMENT AND TERMINATING CONTESTED ADJUDICATORY PROCEEDING) (LBP-09-23) have been served upon the following persons by Electronic Information Exchange.

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Docket No. 52-037-COL

MEMORANDUM AND ORDER (APPROVING SETTLEMENT AGREEMENT AND
TERMINATING CONTESTED ADJUDICATORY PROCEEDING) (LBP-09-23)

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[Original signed by Nancy Greathead]

Office of the Secretary of the Commission

Dated at Rockville, Maryland
this 28th day of August 2009