

November 6, 2009

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of	)	
	)	
PSEG NUCLEAR, LLC	)	Docket Nos. 50-272/ 50-311
	)	
(Salem Nuclear Generating Station,	)	
Units 1 and 2)	)	

NRC STAFF'S RESPONSE TO RIVERKEEPER'S AND NJ FEDERATION'S
REQUEST FOR A SIXTY DAY EXTENSION¹

INTRODUCTION

On November 2, 2009, Delaware Riverkeeper Network ("Riverkeeper") and New Jersey Environmental Federation ("NJ Federation") submitted via email separate requests for a sixty (60) day extension of time for filing Requests for Hearing/Petitions for Leave to Intervene ("Hearing Requests").² While the Staff of the Nuclear Regulatory Commission ("Staff") would not oppose a limited extension to January 7, 2010, to accommodate the unavailability of potential petitioners, experts, and consultants during the holiday season, the Staff opposes granting the full 60-day extension requests.³ For the reasons discussed below, the Staff

¹ The Staff of the Nuclear Regulatory Commission is filing this response concurrently in proceedings for both Hope Creek Nuclear Generating Station, Unit 1 ("Hope Creek") and Salem Nuclear Generating Station, Units 1 and 2 ("Salem"). There is no difference between the filings other than case captions.

² See Letter from Mary K. van Rossum, Delaware Riverkeeper Network, to Gregory B. Jaczko, Chairman, Nuclear Regulatory Commission (Nov. 2, 2009) ("Riverkeeper's Letter"); Letter from Jane Nogaki, Vice Chair, New Jersey Environmental Federation, to Gregory B. Jaczko, Chairman, Nuclear Regulatory Commission (Nov. 2, 2009) ("NJ Federation's Letter").

³ At this point in time, Riverkeeper and NJ Federation have not demonstrated any right to participate in either license renewal proceedings for Hope Creek or Salem.

submits that Riverkeeper's and NJ Federation's extension requests should be denied-in-part and granted-in-part.

BACKGROUND

On September 8, 2009, the Staff published notices in the *Federal Register* stating that license renewal applications for Hope Creek Generating Station, Unit 1 ("Hope Creek") and Salem Nuclear Generating Station, Units 1 and 2 ("Salem") were available on the Nuclear Regulatory Commission's ("NRC") public website.⁴ On October 23, 2009, the Staff published notices in the *Federal Register* stating that the license renewal applications were acceptable for docketing and establishing December 22, 2009, as the deadline for filing Hearing Requests.⁵ On November 2, 2009, Riverkeeper and NJ Federation emailed Chairman Jaczko identical letters requesting a 60-day extension added to the December 22, 2009, deadline.⁶

Riverkeeper and NJ Federation each separately assert that the extension of time to file their Hearing Requests should be granted because (1) "coordination [among the organizations]

⁴ See PSEG Nuclear LLC; Notice of Receipt and Availability of Application for Renewal of Hope Creek Generating Station for An Additional 20-Year Period, 74 Fed. Reg. 46238 (Sept. 8, 2009); PSEG Nuclear LLC; Notice of Receipt and Availability of Application for Renewal of Salem Nuclear Generating Station, Units 1 and 2 Facility Operating Licenses Nos. DPR-70 and DPR-75 for an Additional 20-Year Period, 74 Fed. Reg. 46238 (Sept. 8, 2009).

⁵ See Notice of Acceptance for Docketing of the Application and Notice of Opportunity for Hearing Regarding Renewal of Facility Operating License Nos. DPR-70 and DPR-75 for an Additional 20-Year Period; PSEG Nuclear LLC, Salem Nuclear Generating Station, Units 1 and 2 ("Salem Hearing Notice"), 74 Fed. Reg. 54854 (Oct. 23, 2009); Notice of Acceptance for Docketing of the Application and Notice of Opportunity for Hearing Regarding Renewal of Facility Operating License No. NPF-57 for an Additional 20-Year Period; PSEG Nuclear LLC Hope Creek Generating Station, Unit 1 ("Hope Creek Hearing Notice"), 74 Fed. Reg. 54856 (Oct. 23, 2009).

⁶ Riverkeeper and NJ Federation failed to file this request for an extension in compliance with 10 C.F.R. § 2.302, which requires all filings in adjudicatory proceedings to be sent through the NRC's E-Filing system. The electronic filing requirements were outlined in the notices of hearing for Hope Creek and Salem. See Hope Creek Hearing Notice, 74 Fed. Reg. at 54858; Salem Hearing Notice, 74 Fed. Reg. at 54855-56. As such, Riverkeeper and NJ Federation should be instructed that all future filings must comply with the requirements of 10 C.F.R. § 2.302 or their filings will be rejected. *Detroit Edison Co.* (Enrico Fermi Atomic Power Plant Unit 3), CLI-09-4, 69 NRC 80, 81 n.1 (2009).

requires many meetings and a great deal of consultation and cooperation, all of which takes a significant amount of time”, (2) Salem and Hope Creek are different types of nuclear power plants, (3) the organizations do not have sufficient resources to review the license renewal applications in 60 days, and (4) the “process to retain consultants and experts to provide necessary support and expertise is very difficult to accomplish within 60 days.”⁷

DISCUSSION

I. Legal Standards

The Commission or the presiding officer may extend the time for filing a Hearing Request upon a showing of good cause. 10 C.F.R. § 2.307(a). A showing of good cause requires more than normal difficulties of participating in a hearing or even multiple hearings. *Detroit Edison Co.* (Enrico Fermi Atomic Power Plant Unit 3), CLI-09-4, 69 NRC 80, 82 (2009). In *Fermi*, petitioners requested a 90 day extension to the “deadline for filing hearing requests, petitions to intervene, and contentions ...” to accommodate “the difficulties in coordinating action among volunteers and large public interest organizations and the challenge of simultaneously preparing for an environmental scoping meeting on the [application] while drafting contentions” *Id.* The Commission rejected petitioners’ request for the 90 extension and stated that “[p]etitioners have shown no *special circumstances* amounting to good cause for an extension.” *Id.* (emphasis added). The Commission noted that “many, if not most, groups that seek to intervene in NRC proceedings are organizations that rely on volunteers and must draft contentions while also balancing other obligations.” *Id.* (noting participation in other NRC proceedings like environmental scoping would not demonstrate a showing of good cause).

⁷ Riverkeeper’s Letter at 1; NJ Federation Letter at 1.

The Commission has also viewed motions for extensions of time for filing Hearing Requests with disfavor when the underlying application has been available for an extended period of time. *Id.* See also *Dominion Virginia Power* (Combined License Application for North Anna Unit 3), Order (May 1, 2008) (unpublished).

II. The Substantial Extension of Time for Filing Contentions Is Not Warranted

As in *Fermi*, Riverkeeper and NJ Federation have failed to demonstrate the special circumstances necessary for showing good cause to extend the time for filing their Hearing Requests. *Fermi*, CLI-09-4, 69 NRC at 82. The reasons asserted by both Riverkeeper and NJ Federation resemble those recently rejected by the Commission in *Fermi*. *Id.* As previously discussed, Riverkeeper and NJ Federation raised four reasons for granting the extension, namely: (1) difficulty of coordinating multiple organizations, (2) Salem and Hope Creek are different types of nuclear power plants, (3) insufficient resources preclude them from reviewing the application in a timely manner, and (4) the process for retaining experts is difficult given the 60 day deadline.⁸

The difficulty of coordinating public interest organizations is the same that any public interest organization experiences when it chooses to participate in an NRC proceeding. Thus, this cannot demonstrate the type of special circumstances contemplated by the regulations.

Riverkeeper and NJ Federation appear to treat the license renewal applications for Salem and Hope Creek as a single proceeding for which they must prepare. Contrary to their treatment, Salem and Hope Creek are separate applications.⁹ They have been noticed

⁸ Riverkeeper's Letter at 1; NJ Federation Letter at 1.

⁹ See Hope Creek Hearing Notice, 74 Fed. Reg. at 54856; Salem Hearing Notice, 74 Fed. Reg. at 54854.

separately and each will receive a separate independent review.¹⁰ Thus, Riverkeeper and NJ Federation have elected to take on the additional obligations of participating in potentially separate hearings, including the obligation to timely file their Hearing Requests.¹¹ As the Commission noted in *Fermi*, the difficulties Riverkeeper and NJ Federation may encounter by choosing to participate in both proceedings are not sufficient to warrant this extension.

Riverkeeper and NJ Federation assert that because of their status as public interest organizations, they have insufficient resources to review the applications in the time allotted. But, it is also true that most groups seeking to intervene in NRC license renewal proceedings are public interest organizations. Regardless, the Commission has held that a public interest organization's limitations do not constitute the kind of special circumstances warranting an extension of time. *Fermi*, CLI-09-4, 69 NRC at 82. Thus, Riverkeeper and NJ Federation's status as public interest organizations hardly constitutes the special circumstance that would constitute good cause for an extension of time to file their Hearing Requests.

Finally, Riverkeeper and NJ Federation assert that they do not have sufficient time to retain the appropriate consultants and/or experts to support their contentions. But, all groups that seek to intervene in NRC proceedings must retain appropriate experts before filing contentions. Once again, Riverkeeper and NJ Federation have failed to demonstrate any specific reason, unique to their circumstances, to justify this delay.

¹⁰ Hope Creek Hearing Notice, 74 Fed. Reg. at 54856; Salem Hearing Notice, 74 Fed. Reg. at 54854.

¹¹ In dismissing the same issue in *Fermi*, the Commission stated that "many, if not most, groups that seek to intervene in NRC proceedings are organizations that rely on volunteers and must draft contentions while also balancing other obligations." *Fermi*, 69 NRC at 82. Thus, Riverkeeper's and NJ Federation's decision to participate in potentially two hearings cannot demonstrate the special circumstances necessary to grant an extension.

Moreover, NRC procedures governing license renewal applications are not new.¹² Consequently, Riverkeeper and NJ Federation should be familiar with the procedures that govern the license renewal applications. The applications at issue have been available since early September. As such, Riverkeeper and NJ Federation had sufficient time to prepare, obtain resources, and retain appropriate experts and consultants in order to adequately support their contentions. By the time the contentions are currently due to be filed on December 22, 2009, Riverkeeper and NJ Federation will have had 105 days to review and analyze the license renewal applications for Hope Creek and Salem.¹³ Thus, Riverkeeper and NJ Federation have not shown the special circumstances amounting to good cause and their request should be denied. Nonetheless, recognizing the impact of the holidays on petitioners' ability to prepare their request for a hearing, the Staff would not oppose a reasonable extension of time until the holiday period ends.

CONCLUSION

For the reasons discussed above, Riverkeeper's and NJ Federation's extension requests should be denied because they have failed to demonstrate the requisite special circumstances necessary to show good cause. In light of the intervening holidays during the time Riverkeeper and NJ Federation has to prepare their contentions, the Staff would not

¹² Beginning in 1998, the NRC began reviewing license renewal applications. See NRC, Calvert Cliffs Nuclear Power Plant, Units 1 & 2 - License Renewal Application, <http://www.nrc.gov/reactors/operating/licensing/renewal/applications/calvert-cliffs.html> (last visited Nov. 3, 2009). Since that time, 56 nuclear plants have had their license renewed. See NRC, Status of License Renewal Applications and Industry Activities, <http://www.nrc.gov/reactors/operating/licensing/renewal/applications.html> (last visited Nov. 3, 2009).

¹³ If Riverkeeper and NJ Federation are granted the extension to file Hearing Requests no later than January 12, 2010, they will have had 121 days to review and analyze the license renewal applications. However, if Riverkeeper and NJ Federation were allowed to file their Hearing Requests no later than February 22, 2010, they will have had 167 days to analyze and prepare their contentions. In other words, they will have more than three extra months beyond the time limits contemplated by the regulations.

oppose an extension of time for Riverkeeper and NJ Federation to file their Hearing Requests no later than January 7, 2010.

Respectfully submitted,

Signed (electronically) by

Brian G. Harris

Counsel for NRC Staff

Dated at Rockville, Maryland
This 6th day of November, 2009

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing NRC Staff's Response to Riverkeeper's and NJ Federation's Request For A Sixty Day Extension, dated November 6, 2009, have been served on the following by the Electronic Information Exchange, this 6th day of November, 2009:

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¹ The New Jersey Environmental Federation does not have a Notice of Appearance before the Commission, and are also not listed on the NRC's Service List in the Electronic Information Exchange, therefore a courtesy copy is being sent via e-mail.

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² Delaware Riverkeeper does not have a Notice of Appearance before the Commission, and are also not listed on the NRC's Service List in the Electronic Information Exchange, therefore a courtesy copy is being sent via e-mail.