

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD PANEL

Before the Licensing Board:

G. Paul Bollwerk, III, Chair  
William J. Froehlich  
Nicholas G. Trikouros

In the Matter of

Union Electric Company

(Callaway Plant, Unit 1)

Docket No. 50-483-LR

ASLBP No. 12-919-06-LR-BD01

June 1, 2012

MEMORANDUM AND ORDER

(Initial Prehearing Conference Directives and Guidance)

Relative to the initial prehearing conference scheduled for Thursday, June 7, 2012, the Licensing Board provides the participants with the following directives and guidance:

The allocation of time for arguments by legal counsel in connection with the contested matter of the admissibility of the three National Environmental Policy Act (NEPA)-related contentions proffered by petitioner Missouri Coalition for the Environment (MCE) is as follows:<sup>1</sup>

1. Contentions 1 and 2

MCE -- 30 minutes (includes rebuttal)

Union Electric Company (UEC) and the NRC staff -- 15 minutes each

2. Contention 3

MCE -- 30 minutes (includes rebuttal)

UEC and the NRC staff -- 15 minutes each

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<sup>1</sup> Because the issue of MCE's standing to intervene is not contested, the Board does not intend to entertain any participant presentations regarding that matter.

At the beginning of the argument regarding each contention or group of contentions, MCE will be asked to specify how much of its total allotted time it wishes to reserve for rebuttal. Absent leave of the Board, only one counsel per participant will be permitted to make a presentation regarding the question of the admissibility of Contentions 1 and 2 or Contention 3.

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. In particular, the Board requests that the participants be prepared to provide their views on the following items:

1. Regarding Contention 1:
  - a. Considering what are arguably the agency's three major directives regarding post-incident mitigation measures, does the approach taken relative to the Three Mile Island Action Plan, see Statement of Policy: Further Commission Guidance for Power Reactor Operating Licenses, CLI-80-42, 12 NRC 654, 659-61 (1980), as contrasted with the agency's post-9/11/2001 order, Enforcement Action (EA)-20-26, All Operating Power Reactor Licensees; Order Modifying Licenses (Effective Immediately), 67 Fed. Reg. 9792 (Mar. 4, 2002), and the agency's post-Fukushima Dai-ichi order, EA-12-049, Order Modifying Licenses with Regard to Requirements for Mitigation Strategies for Beyond-Design-Basis External Events (Effective Immediately), 77 Fed. Reg. 16,091 (Mar. 19, 2012), suggest any difference in the scope of a permissible adjudicatory challenge to an ongoing or subsequent applicant/licensee-initiated licensing action based on EA-12-049?

- b. Once the UEC integrated plan for compliance with EA-12-049 has been issued in accord with that order's condition C.1.a., relative to that integrated compliance plan what, if any, responsibility to incorporate/revise/amend/update accrues to (i) UEC in connection with its license renewal application; or (ii) the staff in connection with any pending or issued draft or final supplemental environmental impact statement or safety evaluation report (with or without open items) relating to the UEC license renewal request?
- c. Relative to the UEC and staff arguments concerning the future timing of staff and applicant activities associated with EA-12-049 as a basis for finding this contention to be inadmissible, see, e.g., Ameren's Answer Opposing the [MCE] Hearing Request and Petition to Intervene (May 21, 2012) at 17; NRC Staff's Answer to [MCE] Hearing Request and Petition to Intervene (May 21, 2012) at 13-16, what is the applicability of such arguments to a facility whose license renewal application is submitted after (i) the February 2013 date for the submission of an integrated compliance plan; or (ii) the December 2016 date for licensee implementation of the requirements of EA-12-049? See Status of License Renewal Applications and Industry Activities, <http://www.nrc.gov/reactors/operating/licensing/renewal/applications.html> (table showing estimated future license renewal application submittal dates).
- d. What relevance, if any, does the staff's May 31, 2012 draft interim guidance regarding compliance with EA-12-049 have with regard to the

admissibility of Contention 1. See Japan Lessons-Learned Project Directorate, NRC, Compliance with Order EA-12-049, Order Modifying Licenses with Regard to Requirements for Mitigation Strategies for Beyond-Design-Basis External Events, JLD-ISG-2012-01 (rev. 0 May 31, 2012) (draft issued for public comment) (ADAMS Accession No. ML12146A014); see also Nuclear Energy Institute, Diverse and Flexible Coping Strategies (FLEX) Implementation Guide, NEI 12-06 (rev. B1 May 2012) (ADAMS Accession No. ML12143A232).

2. Concerning Contention 3:

- a. The Commission in the Seabrook license renewal proceeding declared that the staff's environmental impact "need only discuss those alternatives that . . . 'will bring about the ends' of the proposed action' —a principle equally applicable to Environmental Reports." Nextera Energy Seabrook, LLC (Seabrook Station, Unit 1), CLI-12-5, 75 NRC \_\_, \_\_ (slip op. at 49) (Mar. 8, 2012) (quoting Hydro Resources, Inc. (P.O. Box 15910, Rio Rancho, NM 87174), CLI-01-4, 53 NRC 31, 55 (2001) (quoting Citizens Against Burlington v. Busey, 938 F.2d 190, 195 (D.C. Cir.), cert. denied, 502 U.S. 994 (1991))) (footnotes omitted). How should the "ends of the proposed action" be defined in this proceeding?
- b. In his declaration supporting the MCE hearing petition, Dr. Arjun Makhijani discusses the role of wind energy in the Midwest Independent Transmission System Operator (MISO) system. In connection with the MISO:

- i. Is “baseload power” defined by the MISO? If so, how is it defined?
  - ii. Does the MISO assign a capacity value for wind? If, so, what is the significance of this figure?
  - iii. To what extent is there currently “baseload wind” in the MISO and/or Ameren service areas?
  - iv. What is the capacity factor assigned to the Callaway facility for MISO purposes? What is the actual capacity factor for the Callaway plant for each of the past ten years?
  - v. The MISO Tariff (Resource Adequacy-Module E), <https://www.midwestiso.org/Library/Tariff/Pages/Tariff.aspx>, and the MISO Business Practices Manual, <https://www.midwestiso.org/Library/BusinessPracticesManuals/Pages/BusinessPracticesManuals.aspx>, describe the resources that move across the grid. Among the generation resources discussed is a category called dispatchable intermittent resources (DIRs). Is wind energy treated as a DIR by the MISO?
- c. The Commission’s Seabrook decision also states that “[f]or wind power to merit detailed consideration as an alternative to renewing the license for a nuclear power plant, that alternative should be capable of providing ‘technically feasible and commercially viable’ baseload power during the renewal period.” Seabrook, CLI-12-5, 75 NRC at \_\_ (slip op. at 55). What information in the hearing petition or Dr. Makhijani’s supporting declaration indicates that the wind power that is proposed as a baseload

generation alternative to the Callaway facility meets this Commission  
criterion?

It is so ORDERED.

FOR THE ATOMIC SAFETY  
AND LICENSING BOARD

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G. Paul Bollwerk, III  
CHAIR

Rockville, Maryland

June 1, 2012

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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 ) Docket No. 50-483-LR  
(Callaway Power Plant, Unit 1) )  
 )  
(License Renewal) )

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing MEMORANDUM AND ORDER (INITIAL PREHEARING CONFERENCE DIRECTIVES AND GUIDANCE) have been served upon the following persons by Electronic Information Exchange.

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Docket No. 50-483-LR  
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[Original signed by Evangeline S. Ngbea]  
Office of the Secretary of the Commission

Dated at Rockville, Maryland  
this 1<sup>st</sup> day of June 2012