

July 24, 2012

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**

Before the Atomic Safety and Licensing Board

In the Matter of )  
 ) Docket Nos. 50-483-LR  
UNION ELECTRIC CO. )  
 ) ASLBP No. 12-919-06-LR-BD01  
(Callaway Plant, Unit 1) )

**AMEREN'S RESPONSE TO REQUEST TO SHOW CAUSE  
AND AMEREN'S UNOPPOSED MOTION FOR EXTENSION**

Union Electric Company, dba Ameren Missouri ("Ameren") hereby responds to the Atomic Safety and Licensing Board's Memorandum and Order of July 24, 2012, which requested that Ameren and the NRC Staff show cause why the admissibility of the waste confidence contention filed by Missouri Coalition for the Environment (MCE) on July 9, 2012<sup>1</sup> should not be deemed conceded or unopposed. Counsel for Ameren was operating under the assumption that answers to this proffered contention were due 25 days after its filing (*i.e.*, by August 3, 2012) as specified in 10 C.F.R. § 2.309(h). Upon receipt of MCE's new contention, Counsel for Ameren checked the Board's May 4, 2012 Initial Prehearing Order but, seeing no heading related to the filing of new contentions, did not recognize that footnote 3 of this Order was intended to reduce the time for filing an answer to a new contention.<sup>2</sup> Counsel for Ameren respectfully requests the Board's pardon for failing to recognize the import of this footnote.

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<sup>1</sup> Intervenor's Motion for Leave to File a New Contention Concerning Temporary Storage and Ultimate Disposal of Nuclear Waste at Callaway Nuclear Power Plant (July 9, 2012) ("Motion").

<sup>2</sup> Footnote 3 pertains to the section of the Initial Prehearing Order governing motions for extension of time and appears to be expanding the time for filing certain motions and answers under 10 C.F.R. § 2.323(a), rather than reducing the time that 10 C.F.R. § 2.309(h) provides for addressing the admissibility of a new contention. Further, even now upon closer scrutiny, footnote 3 appears worded in an advisory manner unlike the directives in the body of the Initial Prehearing Order, Compare Initial Prehearing Order at 2 ("A motion for extension . . . shall . . .") with id. at 3 n.3 ("The Board notes . . . such motions [seeking the admission of new/amended

In addition, Ameren respectfully moves the Board to set August 3, 2012 as the deadline for responding to the admissibility of MCE's new contention. As the NRC Staff is doing, counsel for Ameren is also preparing answers to the same contention filed in numerous other proceedings in which answers are due on August 3, so a single deadline would promote efficiency and consistency. Further, Counsel for Ameren has consulted with Counsel for MCE and with Counsel for the NRC Staff, and neither MCE nor the NRC Staff objects to this request.

In light of Ameren's counsel failure to recognize the import of footnote 3 to the Initial Prehearing Order (which appears to have also confused the NRC Staff), and in light of the absence of any objection to an August 3 deadline, Ameren respectfully submits that the admissibility of MCE's waste confidence contention should not be deemed conceded or unopposed. Further, Ameren's opposition to the contention was reflected in MCE's Motion. See Motion at 7.<sup>3</sup>

Counsel for Ameren certifies that he has consulted with both MCE and the NRC Staff in a sincere effort to resolve the issues raised in the motion to establish an August 3, 2012 deadline. As discussed above, no party objects to this deadline.

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contentions] should. . . ) (emphasis added). While Counsel for Ameren now understands the Board's intent, this footnote does not stand out as a clear directive.

<sup>3</sup> It should be noted that pursuant to 10 C.F.R. § 2.309(h), answers to contentions are permitted but are not mandatory. Thus, there has been no default. In addition, regardless of whether answers are filed, the Board has an independent obligation to determine that the admissibility standards are met. Cf. Arizona Public Service Co. (Palo Verde Nuclear Generating Station, Units 1, 2, and 3), CLI-91-12, 34 N.R.C. 149, 155 (1991) ("If any one [of the admissibility standards] . . . is not met, a contention must be rejected."). Further, pursuant to 10 C.F.R. § 2.335, the Board may not admit any contention that challenges an NRC rule. Here, the U.S. Court of Appeals for the District of Columbia Circuit has not yet issued its mandate in New York v. Nuclear Regulatory Comm'n, No. 11-1045, 2012 WL 2053581 (D.C. Cir. June 8, 2012). As a result, the NRC's Waste Confidence Rule, at 10 C.F.R. § 51.23(b), currently remains in effect, and the new contention challenging it may not be admitted..

Respectfully Submitted,

/Signed electronically by David R. Lewis/

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David R. Lewis  
PILLSBURY WINTHROP SHAW PITTMAN LLP  
2300 N Street, NW  
Washington, DC 20037-1128  
Tel. (202) 663-8474

Counsel for Ameren

Dated: July 24, 2012

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**CERTIFICATE OF SERVICE**

I hereby certify that Ameren's Answer to Request to Show Cause and Ameren's Unopposed Motion for Extension, dated July 24, 2012, was provided to the Electronic Information Exchange for service to those individuals on the service list in this proceeding, this 24<sup>th</sup> day of July, 2012.

Administrative Judge  
G. Paul Bollwerk, III, Esq.  
Atomic Safety and Licensing Board  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001  
Email: paul.bollwerk@nrc.gov

Administrative Judge  
William J. Froehlich, Esq.  
Atomic Safety and Licensing Board  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001  
Email: william.froehlich@nrc.gov

Administrative Judge  
Dr. Nicholas G. Trikouros  
Atomic Safety and Licensing Board  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001  
Email: nicholas.trikouros@nrc.gov

Secretary  
Att'n: Rulemakings and Adjudications Staff  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001  
hearingdocket@nrc.gov

Office of Commission Appellate Adjudication  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001  
E-mail: OCAAMAIL@nrc.gov

Mary B. Spencer, Esq.  
Beth N. Mizuno, Esq.  
Catherine E. Kanatas, Esq.  
Anita Ghosh, Esq.  
Office of the General Counsel  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001  
E-mail: mary.spencer@nrc.gov;  
beth.mizuno@nrc.gov;  
Catherine.Kanatas@nrc.gov;  
Anita.Ghosh@nrc.gov

Diane Curran, Esq.  
Harmon, Curran, Spielberg & Eisenberg, LLP  
1726 M Street N.W., Suite 600  
Washington, DC 20036  
E-mail: dcurran@harmoncurran.com

Henry B. Robertson, Esq.  
Great Rivers Environmental Law Center  
705 Olive Street, Suite 614  
St. Louis, Missouri 63101  
E-mail: hrobertson@greatriverslaw.org

/Signed electronically by David R. Lewis/

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David R. Lewis