

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

August 8, 2012

MEMORANDUM AND ORDER

(Incorporating Revisions to the Rules of Practice)

We recently declined to admit any of the three contentions proffered by petitioner Missouri Coalition for the Environment (MCE) in support of its April 2012 hearing request challenging the 10 C.F.R. Part 54 application of Union Electric Company, d/b/a Ameren Missouri (Ameren), to renew the Part 50 operating license for its Callaway Plant, Unit 1. See LBP-12-15, 76 NRC __, __ (slip op. at 27-28) (July 17, 2012). Nonetheless, still pending in this proceeding is a July 9, 2012 MCE motion to admit a new contention asserting that the Ameren environmental report (ER) is not in compliance with the requirements of the National Environmental Policy Act because the ER fails to include a discussion of the environmental impacts of spent fuel pool (SFP) leakage, SFP fires, and the lack of a spent fuel repository, as required by the recent decision of the United States Court of Appeals for the District of Columbia Circuit in New York v. NRC, No. 11-1045 (D.C. Cir. June 8, 2012). See [MCE'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) at 4. The Commission has directed that this contention be held in abeyance until further order of the Commission. See Calvert Cliffs Nuclear Project, LLC

(Calvert Cliffs Nuclear Power Plant, Unit 3), CLI-12-16, 76 NRC __, __ & n.10 (slip op. at 5-6 & n.10) (Aug. 7, 2012). Given this case now seems likely to remain before this Licensing Board for some period of time, a recent change to the agency's rules of practice requires that we provide some clarification regarding the procedures applicable in this proceeding.

On August 3, 2012, the agency published in the Federal Register a notice of the adoption of a final rule that outlines changes to its 10 C.F.R. Part 2 rules of practice. See Amendments to Adjudicatory Process Rules and Related Requirements, 77 Fed. Reg. 46,562 (Aug. 3, 2012). Among the alterations is one that potentially impacts scheduling for this proceeding. A change incorporated into 10 C.F.R. § 2.309(i)(1) provides that the applicant and the NRC staff have twenty-five days to file an answer to a hearing petition, or to any subsequently filed request to admit a new or amended contention. See id. at 46,592. This revision can be compared with the provisions of the Board's initial prehearing order setting a fourteen-day time period for an answer to a motion to admit a new or amended contention. See Licensing Board Memorandum and Order (Initial Prehearing Order) (May 4, 2012) at 4 n.3 (unpublished).

According to the explanation in the agency's statement of considerations regarding the effectiveness of these rule changes relative to any ongoing proceedings, any "new or amended requirements will be effective and govern all obligations and disputes that arise after the effective date of the final rule," i.e., September 4, 2012. Id. at 46,562. The statement of considerations thereafter provides an example regarding the impact of the rule's changes on the fourteen-day mandatory discovery disclosure deadline under existing section 3.336(d), which (absent some other party agreement) is changed to a specified monthly due date. The agency's statement of considerations indicates that a monthly disclosure schedule consistent with the new language in section 2.336(d) is to take effect following the September 4 effective date of

the rule change. See id. These provisions of the agency's statement of considerations effectiveness account thus suggest that, absent some new Board order to the contrary reflecting an agreement of the participants or some other factor that provides an appropriate basis for establishing another time period, the final rule's twenty-five-day time frame governing applicant and staff answers to a new/amended contention admission motion would govern in this proceeding.

Given there currently is no already-established briefing schedule that would be affected by this rule change, absent some request from the participants to the contrary submitted in accordance with the schedule established below for responding to this issuance, the Board will consider the twenty-five-day response time established by revised section 2.309(i)(1) for answers to motions to admit new/amended contentions as governing this proceeding going forward.*

If, after reviewing the recent modifications to the agency's rules of practice, any participant sees any other revision that it believes requires an additional scheduling change or

* In this regard, we also note that under another recent change embodied in section 2.309(j)(1), the period within which a licensing board is to make a decision on a motion to admit a new/amended contention is designated as forty-five days from either the filing of the movant's reply or any prehearing conference regarding the motion, whichever is later. See 77 Fed. Reg. at 46,592. For scheduling purposes, we will utilize this revision as well.

some other Board action in this proceeding, it should bring the matter to the Board's attention in a response to this issuance that should be filed on or before Monday, August 20, 2012.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD

/RA/

G. Paul Bollwerk, III
CHAIR

Rockville, Maryland

August 8, 2012

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NUCLEAR REGULATORY COMMISSION

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

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **MEMORANDUM AND ORDER (Incorporating Revisions to the Rules of Practice)** have been served upon the following persons by the Electronic Information Exchange.

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Callaway Power Plant, Unit 1, Docket No. 50-483-LR

MEMORANDUM AND ORDER (Incorporating Revisions to the Rules of Practice)

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[Original signed by Nancy Greathead]

Office of the Secretary of the Commission

Dated at Rockville, Maryland
this 8th day of August, 2012