

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

ATOMIC SAFETY AND LICENSING BOARD

'98 AUG 27 P1:37

Before Administrative Judges:

G. Paul Bollwerk, III, Chairman
Dr. Jerry R. Kline
Thomas D. Murphy

OFFICE
RULING
ADJUDICATOR

In the Matter of

BALTIMORE GAS AND ELECTRIC
COMPANY

(Calvert Cliffs Nuclear
Power Plant, Units 1 & 2)

Docket Nos. 50-317-LR
50-318-LR

ASLBP No. 98-749-01-LR

August 27, 1998

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MEMORANDUM AND ORDER

(Denying Time Extension Motion
and Scheduling Prehearing Conference)

By motion filed August 21, 1998, petitioner National Whistleblower Center (NWC) seeks revision of the Board's August 20, 1998 initial prehearing order as it (1) established a September 11, 1998 deadline for filing any supplement to its intervention petition; and (2) proposed holding an initial prehearing conference the week of October 13, 1998. See Petitioner's Motion for Enlargement of Time (Aug. 21, 1998) [hereinafter NWC Extension Motion]. Petitioner seeks to move the prehearing conference back to at least December 1, 1998, and asserts its purported right, under 10 C.F.R. § 2.714(a)(3), to file petition supplements up to fifteen days prior to the initial prehearing conference. In submissions filed August 24 and August 26,

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1998, respectively, applicant Baltimore Gas and Electric Company (BG&E) and the NRC staff oppose the NWC extension request.

For the reasons given below, we deny the motion. In addition, based on the responses from the participants relative to our proposed initial prehearing conference date, we establish a schedule for that prehearing conference.

I. NWC Extension Motion

Central to NWC's extension request is its asserted inability within the Board-established time frame to complete its efforts to retain "eminent experts" to review the BG&E license renewal application and have those experts provide it with the necessary technical input to frame its contentions. NWC Extension Motion at 1-2. Its unspoken premise for this argument is that for this and other agency licensing proceedings, the "starter's pistol" for application review and contention formulation does not sound until a petitioner's hearing request is filed. It is mistaken. As both BG&E and the staff point out, the application in question has been publically available since late April 1998, some four months ago, at which time the public, including NWC, was advised that a hearing could be offered on the application. See 63 Fed. Reg. 20,663, 20,664 (1998). NWC has not made any showing as to why, in light of

this extended period during which the BG&E application was available, it is unable to complete its contention composition efforts by the September 11 deadline. Thus, its expert review claim does not provide the requisite "unavoidable and extreme circumstances" that warrant an extension. CLI-98-14, 48 NRC ___, ___ (slip op. at 6) (Aug. 19, 1998).

As a basis for its extension request, NWC also proffers the "voluminous and complex" nature of the application and the fact this is the "first" power reactor license renewal proceeding. NWC Extension Motion at 3. The three-volume application, while not light reading, clearly has a much more limited scope compared to initial license applications for power reactors and other facilities. Moreover, while NWC has asserted repeatedly that its contentions will present complex and novel issues, neither its intervention petition nor its extension motion present a single example of what those would be. Again, we are unable to find that NWC has met its burden to establish the requisite "unavoidable and extreme circumstances" to warrant an extension.

Finally, we find no basis for NWC's assertion that section 2.714(a)(3) provides an absolute right to file contentions up to fifteen days before the initial prehearing conference. As the staff points out, this provision sets an

automatic outside limit for the filing of contentions, but only in the absence of licensing board action in accordance with its 10 C.F.R. §§ 2.711(a), 2.718 authority to regulate the proceeding by, among other things, setting schedules. In this instance, exercising that recognized authority, see Houston Lighting and Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-574, 11 NRC 7, 12-13 (1980), consistent with the Commission's scheduling guidance we have established a deadline for filing intervention petition supplements that is not tied to the prehearing conference schedule. And, as we noted in our initial prehearing order, contentions submitted after that date will be considered late-filed.

II. Initial Prehearing Conference Schedule

In our initial prehearing order, we asked the parties to advise us "immediately" of any conflicts relative to conducting a prehearing conference the week of October 13, 1998. Licensing Board Memorandum and Order (Initial Prehearing Order) (Aug. 20, 1998) at 4 (unpublished). Taking into account the responses of counsel, we will convene a prehearing conference in this proceeding beginning at 9:30 a.m. on Thursday, October 15, 1998, in the Atomic Safety and Licensing Board Panel Hearing Room, Room T-3B45, Third Floor, Two White Flint North Building, 11545 Rockville

Pike, Rockville, Maryland. Although the prehearing conference will continue until completed, the Board currently anticipates it should take no more than two days.

In this connection, we note that BG&E has suggested we consider the issue of petitioner's standing on a more expedited basis, separate from the question of contention admissibility. See [BG&E] Answer to Petition to Intervene and Request for Hearing of [NWC] (Aug. 24, 1998) at 11-12. Given the already expedited schedule in this proceeding, the efficiencies of this approach are not altogether apparent. Thus, at the prehearing conference we will entertain arguments on (1) the issue of standing, based on the information in the petitioner's August 7, 1998 hearing request/intervention petition and any additional information NWC supplies in conjunction with its petition supplement; and (2) the admissibility of NWC's proffered contentions.

For the foregoing reasons, it is this twenty-seventh day of August 1998, ORDERED, that:

1. Petitioner NWC's August 21, 1998 motion for extension of time is denied.

2. An initial prehearing conference will be held in this proceeding in accordance with the provisions of section II above.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD*



G. Paul Bollwerk, III
ADMINISTRATIVE JUDGE

Rockville, Maryland

August 27, 1998

* Copies of this memorandum and order were sent this date to counsel for applicant BG&E and to counsel for petitioner NWC by Internet e-mail transmission; and to counsel for the staff by e-mail through the agency's wide area network system.

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(Calvert Cliffs Nuclear Power Plant,
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Docket No.(s) 50-317/318-LR

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB M&O DENY'G TIME EXT. MOTION have been served upon the following persons by U.S. mail, first class, except as otherwise noted and in accordance with the requirements of 10 CFR Sec. 2.712.

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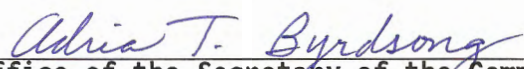
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Dated at Rockville, Md. this
27 day of August 1998


Office of the Secretary of the Commission