

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

LBP-14-12

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

September 8, 2014

MEMORANDUM AND ORDER

(Dismissing Contention and Terminating Proceeding)

In this proceeding, applicant Union Electric Company, d/b/a Ameren Missouri (Ameren), seeks a twenty-year extension of the October 18, 2024 expiration date for the 10 C.F.R. Part 50 operating license for its Callaway Plant, Unit 1. In a July 17, 2012 ruling this Licensing Board found inadmissible all three of the contentions proffered in the April 2012 hearing petition of the Missouri Coalition for the Environment (MCE) challenging various aspects of the Ameren environmental report (ER) submitted in support of the Callaway license renewal application. See LBP-12-15, 76 NRC 14, 41 (2012). Nonetheless, this proceeding has remained open because of the pendency of another contention, submitted by MCE on July 9, 2012, claiming the Ameren ER fails to comply with the requirements of the National Environmental Policy Act (NEPA). Specifically, MCE's pending issue statement asserts that the Ameren ER must 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 decision of the United States Court of Appeals for the District of Columbia Circuit in New York v. NRC, 681 F.3d 471 (D.C. Cir. 2012). See

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, 2014) at 4.

By order dated August 7, 2012, ruling on the status of similar contentions filed in various power reactor licensing proceedings, the Commission directed the licensing boards presiding over the cases in which such contentions were pending, including this Board, to hold those contentions in abeyance pending further Commission order, which would be issued in conjunction with a then to-be-determined agency response to the District of Columbia Circuit's ruling. See CLI-12-16, 76 NRC 63, 68–69 (2012). Subsequently, the Commission decided to act with regard to the issues raised by the District of Columbia Circuit's ruling by instituting a rulemaking to revise the agency's generic determination on the environmental impacts of continued storage of spent nuclear fuel (SNF) found in 10 C.F.R. § 51.23. See Memorandum to R. W. Borchardt, Nuclear Regulatory Commission (NRC) Executive Director for Operations (EDO), from Rochelle C. Bovol, NRC Acting Secretary, Subject: Staff Requirements – SECY-13-0061 – Proposed Rule: Waste Confidence – Continued Storage of [SNF] (RIN 3150-AJ20) at 1–2 (Aug. 5, 2013) (ADAMS Accession No. ML13217A358). As a consequence, on September 13, 2013, the NRC published a proposed rule and a draft generic environmental impact statement (GEIS), NUREG-2157, intended to provide a regulatory basis for the rulemaking changes being proposed. See Waste Confidence — Continued Storage of [SNF], 78 Fed. Reg. 56,776 (Sept. 13, 2013); Draft Waste Confidence [GEIS], 78 id. 56,621 (Sept. 13, 2013).

After receiving public comment on both the proposed rule and the draft GEIS, on August 26, 2014, the Commission adopted a final rule that (1) revises its generic determination regarding the environmental impacts of the continued storage of SNF beyond a reactor's licensed life for operation and prior to ultimate disposal; and (2) concludes that the GEIS,

NUREG-2157, generically determines the environmental impacts of continued storage of SNF beyond the licensed life for operation of a reactor.¹ And contemporaneous with its approval of the final rule on the impacts of continued storage, the Commission entered an order applicable to the various reactor licensing proceedings, including this one, in which a contention was pending that challenged the adequacy of an applicant's ER or the staff's environmental document based on the District of Columbia Circuit's New York v. NRC ruling. In its order, after reviewing the background regarding the continued storage rule that we have synopsised above, the Commission directed "the Atomic Safety and Licensing Boards to reject the contentions pending before them, consistent with our decision today." CLI-14-08, 80 NRC __, __ (slip op. at 10) (Aug. 26, 2014) (footnote omitted).

¹ See Memorandum to Mark A. Satorius, NRC EDO, from Annette L. Vietti-Cook, NRC Secretary, Subject: Staff Requirements – Affirmation Session, 10:00 a.m., Tues., Aug. 26, 2014, Commissioners' Conference Room, One White Flint North, Rockville, Maryland (Open to Public Attendance) at 2 (Aug. 26, 2014) (ADAMS Accession No. ML14237A092); see also Memorandum for the Commissioners from Mark A. Satorius, Subject: Final Rule: Continued Storage of SNF (RIN 3150-AJ20), SECY-14-0072 (July 21, 2014) encls. 1–2 (draft Final Rule, Continued Storage of [SNF], and Office of Nuclear Material Safety and Safeguards, NRC, [GEIS] for Continued Storage of [SNF], NUREG-2157 (Aug. 2014)) (ADAMS Accession No. ML14177A482 (package)).

Thus, acting in accord with that Commission direction, we conclude MCE's July 9, 2012 contention is inadmissible and dismiss it from this proceeding.² Further, there being no other admitted or pending contentions in this proceeding, we close this case.

For the foregoing reasons, it is this eighth day of September 2014, ORDERED, that:

1. The July 9, 2012 request of petitioner MCE to admit a contention challenging the adequacy of applicant Ameren's ER in light of the June 8, 2012 ruling of the District of Columbia Circuit in New York v. NRC is denied.

2. As a consequence of the foregoing action, and there being no other admitted or pending contentions in this case, this proceeding is terminated.

² Given this determination, we need not reach the question whether, with the February 2014 issuance of the NRC staff's draft supplement to the agency's GEIS for nuclear power plant license renewal, see Office of Nuclear Regulation, NRC, [GEIS] for License Renewal of Nuclear Plants, Supp. 51, Regarding Callaway Plant, Unit 1, Draft Report for Comment, NUREG-1437 (Feb. 2014) (ADAMS Accession No. ML14041A373), MCE's July 9, 2012 contention challenging the adequacy of the Ameren ER would, consistent with the so-called "migration tenet," become a challenge to the staff's draft GEIS supplement in the absence of a new or amended contention.

3. As this decision rules upon the only pending unresolved contention in this case and has the effect of closing this proceeding, under the provisions of 10 C.F.R. § 2.341 any appeal to the Commission from this memorandum and order must be taken within twenty-five (25) days after this issuance is served.³

THE ATOMIC SAFETY
AND LICENSING BOARD

/RA/

G. Paul Bollwerk, III, Chair
ADMINISTRATIVE JUDGE

/RA/

William J. Froehlich
ADMINISTRATIVE JUDGE

/RA/

Nicholas G. Trikouros
ADMINISTRATIVE JUDGE

Rockville, Maryland

September 8, 2014

³ In its July 2012 decision denying the admission of all the contentions proffered with MCE's April 24, 2012 initial hearing request/intervention petition, noting the pendency of MCE's July 9 new contention, the Board advised the parties of the opportunity to take any appeal under section 2.311 from that issuance "that may be appropriate." LBP-12-15, 76 NRC at 41-42 & n.15. The degree to which the pendency of that new contention at the time of the Board's ruling on MCE's initial hearing petition tolled the time for filing any appeals from that decision regarding the admissibility of the contentions submitted with MCE's petition would be a matter for Commission determination. See Tenn. Valley Auth. (Sequoyah Nuclear Plant, Units 1 and 2), CLI-14-03, 79 NRC 31, 36-37 (2014).

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NUCLEAR REGULATORY COMMISSION

In the Matter of)
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UNION ELECTRIC COMPANY D/B/A AmerenUE)
)
) 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 (Dismissing Contention and Terminating Proceeding) (LBP-14-12)** have been served upon the following persons by Electronic Information Exchange or via Electronic Mail as indicated by an asterisk.

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

Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Mail Stop - T-3 F23
Washington, DC 20555-0001

G. Paul Bollwerk, III, Chair
Administrative Judge
E-mail: paul.bollwerk@nrc.gov

William J. Froehlich
Administrative Judge
E-mail: william.froehlich@nrc.gov

Dr. Nicholas G. Trikouros
Administrative Judge
E-mail: nicholas.trikouros@nrc.gov

Matthew Flyntz, Law Clerk
Email: matthew.flyntz@nrc.gov

U.S. Nuclear Regulatory Commission
Office of the Secretary of the Commission
Mail Stop O-16C1
Washington, DC 20555-0001

Hearing Docket
E-mail: hearingdocket@nrc.gov

Union Electric Company
Pillsbury Winthrop Shaw Pittman, LLP
2300 N. Street, NW
Washington, DC 20037-1122

David R. Lewis, Esq.
Counsel for the Applicant
E-mail: david.lewis@pillsburylaw.com

Missouri Coalition for the Environment
Edward Smith, Safe Energy Director
Diane Curran, Esq.
Henry B. Robertson, Esq.
Email: showmenocwip@gmail.com
dcurran@harmoncurran.com
hrobertson@greatriverslaw.org

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

**MEMORANDUM AND ORDER (Dismissing Contention and Terminating Proceeding)
(LBP-14-12)**

U.S. Nuclear Regulatory Commission

Office of the General Counsel

Mail Stop - O-15 D21

Washington, DC 20555-0001

Edward Williamson, Esq.

Mary Spencer, Esq.

Catherine Kanatas, Esq.

Anita Ghosh, Esq.

Beth N. Mizuno, Esq.

David Cylkowski, Esq.

Email: edward.williamson@nrc.gov

mary.spencer@nrc.gov

catherine.kanatas@nrc.gov

anita.ghosh@nrc.gov

beth.mizuno@nrc.gov

david.cylkowski@nrc.gov

OGG Mail Center: ogcmailcenter@nrc.gov

[Original signed by Herald M. Speiser]
Office of the Secretary of the Commission

Dated at Rockville, Maryland
this 9th day of September, 2014