

December 8, 2014

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
BEFORE THE SECRETARY OF THE COMMISSION

In the Matter of:)
)
Union Electric Co.) Docket No. 50-483-LR
)
(Callaway Plant Unit 1))

**MISSOURI COALITION FOR THE ENVIRONMENT’S
MOTION TO REOPEN THE RECORD OF
LICENSE RENEWAL PROCEEDING FOR
CALLAWAY UNIT 1 NUCLEAR POWER PLANT**

I. INTRODUCTION

Pursuant to 10 C.F.R. § 2.326, Missouri Coalition for the Environment (“MCE”) hereby move to reopen the record in this proceeding to admit a new Contention challenging the legal adequacy of NRC’s recently-issued Supplement 51 to the Generic Environmental Impact Statement for License Renewal of Nuclear Plants (Oct. 2014) (“License Renewal GEIS Supp. 51”).¹ MCE contends that under the National Environmental Policy Act (“NEPA”), License Renewal GEIS Supp. 51 does not provide the NRC with an adequate legal basis for re-licensing Callaway Unit 1 because it relies entirely for its evaluation of the environmental impacts of spent fuel storage and disposal on the Continued Storage of Spent Nuclear Fuel Rule (79 Fed. Reg. 56,238 (Sept. 19, 2014) (“Continued Spent Fuel Storage Rule”)) and the Generic Environmental

¹ License Renewal EIS Supp. 51 is accessible at <http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr1437/supplement51/>. The NRC published a notice of the issuance of License Renewal GEIS Supp. 51 on November 4, 2014. Letter from Brian Wittick, NRC, to Fadi Diya, Ameren Missouri Callaway, re: Notice of Availability of the Final Plant-Specific Supplement 51 to the Generic Environmental Impact Statement for License Renewal of Nuclear Plants Regarding Callaway Plan, Unit 1 (Nov. 4, 2014) (ML14252A805) (“Wittick Letter”). The Wittick Letter was posted on ADAMS November 6, 2014.

Impact Statement for Continued Storage of Spent Nuclear Fuel (NUREG-2157, September 2014) (“Continued Spent Fuel Storage GEIS”). License Renewal GEIS Supp. 51 at 6-2 – 6-3.

As discussed in MCE’s Hearing Request, while MCE seeks admission of its contention, MCE does not seek to litigate the substantive content of its contention in an adjudicatory hearing. Instead, MCE has already raised its concerns about the Continued Spent Fuel Storage Rule and the Continued Spent Fuel Storage GEIS in comments on draft versions of those documents, and the NRC has already either rejected or disregarded MCE’s comments in the final versions of the Rule and GEIS. MCE also has appealed the final versions to the U.S. Court of Appeals for the District of Columbia Circuit. *See Beyond Nuclear v. NRC*, Docket No. 14-1216 (filed Oct. 29, 2014).² The sole purpose of MCE’s Contention is to lodge a formal challenge to the NRC’s complete and unqualified reliance, in License Renewal GEIS Supp. 51, on the legally deficient Continued Spent Fuel Storage Rule and Continued Spent Fuel Storage GEIS for purposes of approving a twenty-year extension of the operating license for Callaway Unit 1. This motion is necessary because the hearing record is closed.

Several overlapping factors, set forth in three regulations, govern motions to reopen and admit new contentions. This motion and the accompanying Contention satisfy each of these factors. *See* 10 C.F.R. §§ 2.309(c), 2.323, and 2.326.

II. JURISDICTION

Until issuance of its initial final decision, a Licensing Board has jurisdiction to reopen a proceeding. *See* 10 C.F.R. §§ 2.318(a), 2.713(a), 2.319(m), and 2.341; *Metro. Edison Co. (Three Mile Island Nuclear Station, Unit 1), ALAB-699, 16 NRC 1324, 1326, 1327 (1982)*. After that,

² As discussed below in Section II.A, *Beyond Nuclear v. NRC* was consolidated with four other cases and is now captioned *New York v. NRC*.

jurisdiction lies with the Commission. Therefore, MCE has filed this Motion before the Secretary.

III. THIS MOTION SATISFIES THE STANDARDS FOR REOPENING A CLOSED HEARING RECORD SET FORTH IN 10 C.F.R. § 2.326(a).

10 C.F.R. § 2.236(a) provides three criteria which must be satisfied for this motion to be granted:

- (1) The motion must be timely. However, an exceptionally grave issue may be considered in the discretion of the presiding officer even if untimely presented;
- (2) The motion must address a significant safety or environmental issue; and
- (3) The motion must demonstrate that a materially different result would be or would have been likely had the newly proffered evidence been considered initially.

Id. This motion and the accompanying contention satisfy all three criteria, as discussed below.

A. This Motion is Timely.

Pursuant to 10 C.F.R. § 2.326, motions to re-open the record must be “timely.” The NRC judges timeliness of motions to reopen the record by the same standards as for contentions. 77 Fed. Reg. 46,562, 46,571 (Aug. 3, 2012). This motion to reopen is timely because it has been submitted within 30 days of November 6, 2014, the date the NRC posted a notice of availability of License Renewal GEIS Supp. 51 on ADAMS. *See* Wittick Letter; *Shaw AREVA MOX Services* (Mixed Oxide Fuel Fabrication Facility), LBP-08-11, 67 NRC 460, 493 (2008) (noting that “[m]any times,” ASLBs have selected 30 days as a presumptively acceptable time period for contentions).

B. This Motion and the Accompanying Contention Address a Significant Environmental Issue.

This motion and the accompanying Contention raise the significant environmental issue that License Renewal GEIS Supp. 51 lacks an adequate analysis of the environmental impacts of

spent fuel storage and disposal, and therefore fails to provide sufficient support for the proposed re-licensing of Callaway Unit 1.

C. This Motion and the Accompanying Contention Would Likely Produce a Materially Different Result in this Proceeding.

The purpose of MCE's Contention is to ensure that in the reasonably likely event that the U.S. Court of Appeals grants MCE's petition for review of the Continued Spent Fuel Storage Rule and GEIS and Rule and reverses them for failure to comply with NEPA, it will result in the withdrawal of License Renewal GEIS Supp. 51 as a basis for re-licensing Callaway Unit 1. Thus, admission of this contention would likely produce a materially different result in this proceeding.

IV. THIS MOTION SATISFIES THE STANDARDS FOR REOPENING A CLOSED HEARING RECORD SET FORTH IN 10 C.F.R. § 2.326(b).

10 C.F.R. § 2.326(b) requires that a motion to reopen the record must be accompanied by affidavits that set forth the factual and/or technical bases for the movant's claim that the criteria of Section 2.326(a) have been satisfied. MCE has not submitted affidavits, because the bases for this motion are purely legal: As discussed in MCE's Contention, the sole purpose of MCE's Contention – and therefore of this motion – is to ensure that any court decision resulting from MCE's appeal of the generic Continued Spent Fuel Storage Rule and GEIS will also be applied to the individual Callaway Unit 1 license renewal proceeding, which relies on the Continued Spent Fuel Storage Rule and GEIS.

V. THIS MOTION AND THE ACCOMPANYING CONTENTION SATISFY THE STANDARDS FOR CONTENTIONS FILED AFTER THE DEADLINE SET FORTH IN 10 C.F.R. §§ 2.326(d) AND 2.309(c).

10 C.F.R. § 2.326(d) provides that “[a] motion to reopen which relates to a contention not previously in controversy among the parties must also satisfy the § 2.309(c) requirements for

new or amended contentions filed after the deadline in § 2.309(b).” This motion and the accompanying new contention meet the requirements of 10 C.F.R. § 2.309(c), which calls for a showing that:

- (i) The information upon which the filing is based was not previously available;
- (ii) The information upon which the filing is based is materially different than information previously available; and
- (iii) The filing has been submitted in a timely fashion based on the availability of the subsequent information.

First, the information on which the contention is based – License Renewal GEIS Supp. 51 – was not publicly noticed until the Wittick Letter was posted on ADAMS November 6, 2014.

Second, the information in License Renewal GEIS Supp. 51 is materially different from the information in the draft version of License Renewal GEIS Supp. 51, because the draft was published in January 2014, before the Continued Spent Fuel Storage Rule or the GEIS was issued. Supplement 51 to the Generic Environmental Impact Statement for License Renewal of Nuclear Plants (Draft for Comment (Jan. 2014)) (ML14041A373).

Third, as discussed above, the contention is timely because it has been submitted within 30 days of November 6, 2014, the date the NRC posted the Wittick Letter on ADAMS. *Shaw AREVA MOX Services* (Mixed Oxide Fuel Fabrication Facility), LBP-08-11, 67 NRC 460, 493 (2008) (noting that “[m]any times,” ASLBs have selected 30 days as a presumptively acceptable time period for contentions).

VI. CONSULTATION CERTIFICATION PURSUANT TO 10 C.F.R. § 2.323(B)

Undersigned counsel Henry Robertson certifies that on December 4, 2014, he contacted counsel for the applicant and the NRC staff in an attempt to obtain their consent to this motion. Counsel for both Ameren and the Staff stated that they would oppose the motion.

VII. CONCLUSION

For the foregoing reasons, MCE's Motion to Reopen the Record should be granted.

Respectfully submitted,

[Electronically signed by]

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