December 18, 2014

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Commission

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

AMEREN'S ANSWER OPPOSING
MISSOURI COALITION FOR THE ENVIRONMENT'S
HEARING REQUEST AND MOTION TO REOPEN THE RECORD

I. INTRODUCTION

Union Electric Company, dba Ameren Missouri ("Ameren"), hereby submits this Answer opposing Missouri Coalition for the Environment's Hearing Request and Petition to Intervene in License Renewal Proceeding for Callaway Nuclear Plant (Dec. 8, 2014) ("Hearing Request') and Missouri Coalition for the Environment's Motion to Reopen the Record of License Renewal Proceeding for Callaway Unit 1 Nuclear Power Plant (Dec. 8, 2014) ("Motion to Reopen"). The Missouri Coalition for the Environment ("MCE") seeks admission of one contention asserting that the final Supplemental Environmental Impact Statement supporting renewal of the Callaway license ("Callaway FSEIS")[1] does not provide an adequate basis for relicensing because it relies on the Continued Storage Rule[2] and Generic Environmental Impact Statement for Continued Storage of Spent Nuclear Fuel ("Continued Storage GEIS").[3] Hearing Request at 1-2; Motion to Reopen at 1-2. The Hearing Request and Motion to Reopen must be rejected because they

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[1] NUREG-1437, Supp. 51, Generic Environmental Impact Statement for License Renewal of Nuclear Plants, Supplement 51 Regarding Callaway Plant, Unit 1 (Oct. 2014) (ADAMS Accession No. ML14289A140).

[2] Continued Storage of Spent Nuclear Fuel, Final Rule, 79 Fed. Reg. 56,238 (Sept. 19, 2014).

[3] NUREG-2157, Generic Environmental Impact Statement for Continued Storage of Spent Nuclear Fuel (Sept. 2014) (ADAMS Accession No. ML 14196A105).

impermissibly challenge the Commission's rules, are untimely, and fail to satisfy applicable pleading standards.

II. BACKGROUND

In December 2011, Ameren applied for renewal of Operating License No. NPF-30 for the Callaway Plant, Unit 1. MCE petitioned to intervene and requested a hearing, but its contentions were found inadmissible, except for one asserting that the Environmental Report was deficient in light of the decision in *New York v. NRC*, 681 F.3d 471 (D.C. Cir. 2012) vacating the NRC's Waste Confidence Rule. *See Union Electric Company* (Callaway Plant, Unit 1), LBP-12-15, 76 N.R.C. 14 (2012). Pursuant to the Commission's direction, that Waste Confidence contention was held in abeyance. *Calvert Cliffs 3 Nuclear Project* (Calvert Cliffs Nuclear Power Plant, Unit 3), CLI-12-16, 76 N.R.C. 63, 68-69 & n.10 (2012); *Callaway*, Memorandum and Order (Suspending Date for Submission of Reply Pleading) (Aug. 8, 2012).

Following the Commission's approval of the new Continued Storage Rule on August 26, 2014,[4] the Commission issued a further Order directing the dismissal of Waste Confidence contentions previously held in abeyance. *Calvert Cliffs 3 Nuclear Project* (Calvert Cliffs Nuclear Power Plant, Unit 3), CLI-14-08, 80 N.R.C. ___, slip op. at 12 (Aug. 26, 2014). As discussed in that Order and in the Continued Storage GEIS, the NRC considered addressing the environmental impacts of continued storage in site-specific reviews, but concluded that the impacts of continued storage will not vary significantly across sites and can be analyzed generically. *Id.* at 9. The Commission further stated that, "[b]ecause these generic impact determinations have been the subject of extensive public participation in the rulemaking process,

[4] Staff Requirements –SECY-14-007 – Final Rule, Continued Storage of Spent Nuclear Fuel (Aug. 26, 2014) (ADAMS Accession No. ML14237A092).

they are excluded from litigation in individual proceedings." *Id.* In addition, the Commission lifted its previous suspension of final licensing decisions, permitting the NRC Staff to issue licenses following implementation of the Continued Storage Rule. *Id.* at 7. In accordance with the Commission's Order, the Atomic Safety and Licensing Board then dismissed the pending Waste Confidence Contention in Callaway license renewal proceeding and terminated that adjudicatory proceeding. *Union Electric Company* (Callaway Plant, Unit 1), LBP-14-12, 80 N.R.C. __ , slip op. (Sept. 8, 2014).

On September 19, 2014, the NRC published the final Continued Storage Rule in the Federal Register. 79 Fed. Reg. 56,238. That rule states that "[t]he Commission has generically determined that the environmental impacts of continued storage of spent nuclear fuel beyond the licensed life for operation of a reactor are those impacts identified in NUREG–2157, 'Generic Environmental Impact Statement for Continued Storage of Spent Nuclear Fuel.'" 10 C.F.R. § 51.23(a). The Continued Storage Rule further states, "[t]he impact determinations in NUREG–2157 regarding continued storage shall be deemed incorporated into the environmental impact statements described in §§ 51.75, 51.80(b), 51.95, and 51.97(a)." 10 C.F.R. § 51.23(b). The environmental impact statements described in § 51.95 include those pertaining to license renewal.

On October 29, 2014, the NRC Staff released and made publicly available in ADAMS the Callaway FSEIS.[5] As indicated by change bars in right margins, the FSEIS essentially contains two paragraphs that were not in the draft SEIS concerning spent fuel storage following permanent cessation of operation. *See* FSEIS at 6-3. The first added paragraph states that on

[5] The date that this document was released is indicated by the "Date Added" entry in ADAMS (*see* Accession No. ML14289A140), and also in the Folder View of Recently Released Documents for October 29, 2014.

August 26, 2014, the Commission approved the revised rule at 10 C.F.R. § 51.23 and associated GEIS, which were then published in the Federal Register on September 19, 2014. *Id.* It further states that the new rule adopts the generic determinations regarding the environmental impacts of continued storage, and by rule, these impacts are deemed incorporated into the SEIS. *Id.* The second added paragraph states that, in CLI-14-08, the Commission held that the Continued Storage Rule and GEIS cure the deficiencies identified in *New York v. NRC*, 681 F.3d 471 (D.C. Cir. 2012) and satisfy the NRC's NEPA obligations with respect to continued storage for initial, renewed and amended licenses. *Id.*

The EPA published a notice of receipt of the FSEIS on November 14, 2014. *See* 79 Fed. Reg. 68,307 (Nov. 14, 2014). Thirty days having passed, the NRC may now issue Callaway's renewed operating license.[6] Because the safety review was completed with the issuance of the final safety evaluation report in August 2014,[7] the NRC Staff's review is complete.

III. APPLICABLE STANDARDS

The NRC does not look with favor on amended or new contentions filed after the initial hearing request. *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-04-36, 60 N.R.C. 631, 636 (2004). In particular, the Commission disfavors the filing of contentions "at the eleventh hour of an adjudication" (as MCE is doing here). *See Entergy Nuclear Operations, Inc.* (Vermont Yankee Nuclear Power Station), CLI-11-2, 73

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[6] MCE has filed a previous new contention and motion to reopen, along with a petition to suspend final decisionmaking, which are currently pending before the Commission. *See* Petition to Suspend Final Decisions in All Pending Reactor Licensing Proceedings Pending Issuance of Waste Confidence Safety Findings (Sept. 29, 2014); Missouri Coalition for the Environment's Motion for Leave to File a New Contention Concerning the Absence of Required Waste Confidence Safety Findings in the Relicensing Proceeding at Callaway 1 Nuclear Power Plant (Sept. 29, 2014); [Missouri Coalition for the Environment's] Motion to Reopen the Record for Callaway Nuclear Power Plant (Sept. 29, 2014).

[7] Safety Evaluation Report Related to the License Renewal of Callaway Plant, Unit 1, Docket No. 50-483 (Aug. 2014) (ADAMS Accession No. ML14232A380).

N.R.C. 333, 337 (2011). "This policy is grounded in the doctrine of finality, which states that at some point an adjudicatory proceeding must come to an end." *Id.* Thus, reopening an adjudicatory record is considered an "extraordinary action." *Id.* at 338.

Where, as here, the adjudicatory record has been closed, the Commission's rules specify that a motion to reopen the record *will not* be granted unless the following criteria are satisfied:

> (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.

10 C.F.R. § 2.326(a). Further, under the NRC rules,

> [t]he motion must be accompanied by affidavits that set forth the factual and/or technical bases for the movant's claim that the criteria of paragraph (a) of this section have been satisfied. Affidavits must be given by competent individuals with knowledge of the facts alleged, or by experts in the disciplines appropriate to the issues raised. Evidence contained in affidavits must meet the admissibility standards of this subpart. Each of the criteria must be separately addressed, with a specific explanation of why it has been met. When multiple allegations are involved, the movant must identify with particularity each issue it seeks to litigate and specify the factual and/or technical bases which it believes support the claim that this issue meets the criteria in paragraph (a) of this section.

10 C.F.R. § 2.326(b).[8]

The Commission has repeatedly emphasized that "[t]he burden of satisfying the reopening requirements is a heavy one." *AmerGen Energy Co.* (Oyster Creek Nuclear Generating Station) CLI-09-7, 69 N.R.C. 235, 287 (2009) (citing *Louisiana Power & Light Co.* (Waterford Steam Electric Station, Unit 3), CLI-86-1, 23 N.R.C. 1, 5 (1986)). "Bare assertions and speculation . . . do not supply the requisite support." *Oyster Creek*, CLI-09-7, 69 N.R.C. at

[8] *See also Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), CLI-12-15, 75 N.R.C. 704, 713 (2012).

287. *See also AmerGen Energy Co.* (Oyster Creek Nuclear Generating Station), CLI-08-28, 68 N.R.C. 658, 674 (2008).

In addition, where a motion to reopen relates to a contention not previously in controversy, as is the case here, a motion to reopen must also satisfy the timeliness standards in 10 C.F.R. § 2.309(c). 10 C.F.R. § 2.326(d); *Pilgrim*, CLI-12-3, 75 N.R.C. at 140.[9] Section 2.309(c) provides that a new or amended contention filed after the deadline for hearing requests and contentions *will not* be entertained, absent a determination that a participant has demonstrated good cause by showing that:

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

10 C.F.R. § 2.309(c)(1).

Finally, any new contention must satisfy the standards for admissibility in 10 C.F.R. § 2.309(f)(1). To be admissible, a contention must:

> (i) Provide a specific statement of the issue of law or fact to be raised or controverted;
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> (ii) Provide a brief explanation of the basis for the contention;
>
> (iii) Demonstrate that the issue raised in the contention is within the scope of the proceeding;
>
> (iv) Demonstrate that the issue raised in the contention is material to the findings the NRC must make to support the action that is involved in the proceeding;
>
> (v) Provide a concise statement of the alleged facts or expert opinions which support the requestor's/petitioner's position on the issue and on which the

[9] *See also Dominion Nuclear Connecticut, Inc*. (Millstone Nuclear Power Station, Unit 3), CLI-09-5, 69 N.R.C. 115, 125 (2009); *Oyster Creek*, CLI-08-28, 68 N.R.C. at 668.

petitioner intends to rely at hearing, together with references to the specific sources and documents on which the requestor/petitioner intends to rely to support its position on the issue; and

(vi) Provide sufficient information to show that a genuine dispute exists with the applicant/licensee on a material issue of law or fact. This information must include references to specific portions of the application (including the applicant's environmental report and safety report) that the petitioner disputes and the supporting reasons for each dispute, or, if the petitioner believes that the application fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the petitioner's belief.

10 C.F.R. § 2.309(f)(1)(i)-(vi).

These standards are enforced rigorously. If any one of these standards is not met, a contention must be rejected. *Arizona Public Service Co.* (Palo Verde Nuclear Generating Station, Unit Nos. 1, 2, and 3), CLI-91-12, 34 N.R.C. 149, 155 (1991); *USEC, Inc.* (American Centrifuge Plant), CLI-06-9, 63 N.R.C. 433, 437 (2006).

IV. MCE'S HEARING REQUEST MUST BE DENIED BECAUSE ITS CONTENTION IS INADMISSIBLE

MCE's proposed new contention, which in essence asserts that the NRC may not rely on its Continued Storage Rule and Continued Storage GEIS in issuing the renewed operating license for Callaway (Hearing Request at 1-2), falls far short of the Commission's admissibility standards. The contention must be rejected out of hand as an impermissible challenge to an NRC rule. As 10 C.F.R. § 2.335(a) provides, "no rule or regulation of the Commission . . . is subject to attack . . . in any adjudicatory proceeding subject to this part." Because MCE's proposed contention is an impermissible challenge to the Continued Storage Rule, and thus barred by 10 C.F.R. § 2.335, it is not within the scope of the proceeding or material to the findings that the NRC Staff must make, and therefore inadmissible under 10 C.F.R. § 2.309(f)(1)(iii)-(iv).

MCE's Contention is also an impermissible challenge to 10 C.F.R. § 51.53(c) and App. B, Table B-1. Table B-1, as recently amended, makes onsite storage of spent fuel (both before and after reactor operation) and offsite radiological impacts of spent nuclear fuel disposal Category 1 issues (*see* 79 Fed. Reg. at 56,263), and 10 C.F.R. § 51.53(c)(3)(i) precludes consideration of Category 1 issues, absent a waiver or suspension of the rule.

MCE's Hearing Request is not supported by any petition to waive or suspend the NRC rules. In fact, MCE explicitly states that its contention is not supported by a waiver petition and adds that no purpose would be served by such a waiver because MCE does not seek an adjudicatory hearing on NRC's generic environmental findings. Hearing Request at 2-3 n.3. The absence of a waiver or suspension petition precludes admission of the Contention. It should be also noted that one of MCE's complaints regarding the Continued Storage GEIS is that it "fails to assess certain site-specific features that could increase the impacts of a leak or fire." Hearing Request at 8. If there were any such site-specific features that would result in the Continued Storage Rule not serving its intended purpose (and MCE has identified none), MCE should have raised them in a waiver request. Having purposely decided not to seek a waiver, MCE should not later be permitted to complain that any site-specific consideration renders the Continued Storage Rule inapplicable to Callaway.

Even if MCE's Contention were not barred as an impermissible challenge to the NRC rules, it would still be inadmissible for failing to include alleged facts or expert opinion supporting the petition and failing to provide sufficient information demonstrating a genuine material dispute with the application, contrary to 10 C.F.R. § 2.309(f)(1)(v)-(vi). As previously stated, MCE does not want an adjudicatory hearing (Hearing Request at 3 n.3) and states that its "Hearing Request is a place-holder." Hearing Request at 2. The Commission's rules, however,

nowhere contemplate "placeholder" filings, which the Commission considers tantamount to impermissible "notice pleadings." *Millstone*, CLI-09-5, 69 N.R.C. at 120. Apparently because it has no real interest in pleading an admissible contention, MCE merely asserts in conclusory fashion a number of alleged deficiencies in the GEIS. *See* Hearing Request at 8. Such bare assertions do not suffice. *Oyster Creek*, CLI-09-7, 69 N.R.C. at 287 (citing *Oyster Creek*, CLI-08-28, 68 N.R.C. at 674). MCE does refer generally to hundreds of pages of comments that were submitted during preparation of the GEIS (Hearing Request at 7, 9), but "Commission practice is clear that a petitioner may not simply incorporate massive documents by reference as the basis for or a statement of his contentions." *Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), CLI-89-3, 29 N.R.C. 234, 240-41 (1989).

V. MCE'S HEARING REQUEST AND MOTION TO REOPEN MUST BE DENIED BECAUSE THEY ARE UNTIMELY

Separate and apart from MCE's failure to plead an admissible contention, its Hearing Request and Motion to Reopen must be rejected because they are untimely. While MCE argues that its Hearing Request and Motion to Reopen are timely because they were submitted within 30 days of a letter being posted in ADAMS providing notice of the availability of the FSEIS (Hearing Request at 10; Motion to Reopen at 3),[10] the information on which those filings is based was available two months earlier.

The timeliness requirement in 10 C.F.R. § 2.326(a)(1) for a Motion to Reopen and the good cause standard in 10 C.F.R. § 2.309(c) for a new contention are inextricably linked. As the Commission has explained,

[10] In point of fact, MCE's Hearing Request and Motion to Reopen, filed on December 8, 2014, were not filed within 30 days of the November 4, 2014 letter on which MCE's relies, or within 30 days of its posting on November 6, 2014. Further, the FSEIS itself was publicly available in ADAMS on October 29, 2014.

> [w]hen determining whether a new contention is timely for the purposes of reopening a record, we look to whether the contention could have been raised earlier -- that is, whether the information on which it is based was previously available or whether it is materially different from what was previously available, and whether it has been submitted in a timely fashion based on the information's availability.

Entergy Nuclear Generation Co. (Pilgrim Nuclear Power Station), CLI-12-21, 76 N.R.C. 491, 498 (2012); *see also Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), CLI-12-10, 75 N.R.C. 479, 492-93 (2012). Thus, the timeliness of both the Contention and the Motion to Reopen is determined by the Section 2.309(c) factors.

Here, MCE knew when the Commission approved the Continued Storage Rule on August 26, 2014 that the Commission had determined to apply the conclusions in the Continued Storage GEIS in all license renewal proceedings. As the Continued Storage Rule stated, MCE knew that the generic conclusions in the GEIS would be considered incorporated into the FSEIS. Thus, the actual publication of the FSEIS provided no information that was new or materially different from that which was previously available, and thus provides no good cause for the Contention or Motion to Reopen under the Section 2.309(c) factors. Indeed, the only information in the FSEIS that was not in the draft SEIS related to these issues were statements reflecting the Commission's approval and publication of the Continued Storage Rule, the provision in that rule deeming the GEIS conclusions incorporated, and the Commission's decision in CLI-14-08. *See* FSEIS at 6-3.

A document such as the FSEIS that "merely summarize[es] earlier documents or compil[es] pre-existing, publicly available information into a single source do[es] not render 'new' the summarized or compiled information." *See Vermont Yankee,* CLI-11-2, 73 N.R.C. at 344. A document that merely compiles and organizes preexisting information does not provide good cause for a late contention. *Northern States Power Co.* (Prairie Island Nuclear Generating Plant, Units 1 and 2), CLI-10-27, 72 N.R.C. 481, 496 (2010).

> To conclude otherwise would turn on its head the regulatory requirement that new contentions be based on "information . . . *not previously available."* Further, such an interpretation is inconsistent with our longstanding policy that a petitioner has an "iron-clad obligation to examine the publicly available documentary material . . . with sufficient care to enable it to uncover any information that could serve as the foundation for a specific contention."

Id. (footnote omitted). *See also Duke Power Co.* (Catawba Nuclear Station, Units 1 and 2), CLI-83-19, 17 N.R.C. 1041, 1043 (1983) ("the unavailability of [a] document does not constitute a showing of good cause for admitting a late-filed contention when the factual predicate for that contention is available from other sources in a timely manner").

VI. MCE'S HEARING REQUEST AND MOTION TO REOPEN MUST BE DENIED BECAUSE MCE FAILS TO SATISFY THE OTHER STANDARDS FOR REOPENING A CLOSED RECORD

Even if MCE had timely submitted an admissible contention (which it has not), its Hearing Request must be denied because MCE comes nowhere close to satisfying the Commission's deliberately heavy reopening standards. As the Commission has explained, to meet the reopening standards, the movant must "demonstrate a likelihood of *prevailing*." *Pilgrim*, CLI-12-15, 75 N.R.C. at 719. Technical details and analysis are required to support reopening the proceeding. *Oyster Creek*, CLI-08-28, 68 N.R.C. at 674. "To meet the reopening standard . . . it is insufficient merely to point to disputed facts." *Pilgrim*, CLI-12-10, 75 N.R.C. at 499. "The evidence must be sufficiently compelling to suggest a *likelihood* of materially affecting the ultimate results in the proceeding." *Id.* (emphasis added). MCE's speculative and conclusory assertions, unsupported by any evidence or analysis other than vague references to massive comments submitted during preparation of the GEIS (with no discussion of how those comments were resolved), falls far short of satisfying this prong of the reopening standards. *See Oyster Creek*, CLI-09-7, 69 N.R.C. at 290-91.

Further, MCE entirely ignores the requirement in 10 C.F.R. § 2.326(b) to support its Motion to Reopen with affidavits addressing each of the reopening criteria, "each of which 'must be separately addressed, with a specific explanation of why it has been met.'" *Pilgrim*, CLI-12-10, 75 N.R.C. at 496 (quoting 10 C.F.R. § 2.326(b)). MCE asserts that it has not submitted affidavits because the bases for its Motion to Reopen are purely legal. However, the technical nature of some of its claims (*see* Hearing Request at 8) belies this claim. Further, the criteria in 10 C.F.R. § 2.326(a) that must be addressed by affidavit are not limited to the bases for MCE's Contention. MCE's failure to fully comply with Section 2.326(b) alone is sufficient grounds to deny the Motion to Reopen, and consequently the Hearing Request. *Southern Nuclear Operating Company* (Vogtle Electric Generating Plant, Units 3 and 4), CLI-11-8, 74 N.R.C. 214, 222 (2011) ("The August 2010 Pleading could have been rejected solely on the basis of the Appellants' failure to comply fully with section 2.326(b)").

VII. CONCLUSION

For all of these reasons, MCE's Hearing Request and Motion to Reopen should be denied.

Respectfully Submitted,

/Signed electronically by David R. Lewis/

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Dated: December 18, 2014

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Ameren's Answer Opposing Missouri Coalition for the Environment's Hearing Request and Motion to Reopen the Record have been served through the E-Filing system on the participants in the above-captioned proceeding, this 18th day of December 2014.

/Signed electronically by David R. Lewis/

David R. Lewis