

December 29, 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 REPLY  
TO OPPOSITIONS TO HEARING REQUEST/PETITION TO INTERVENE  
AND MOTION TO REOPEN THE RECORD OF LICENSE RENEWAL PROCEEDING  
FOR CALLAWAY NUCLEAR POWER PLANT**

Pursuant to 10 C.F.R. § 2.309(i)(2), Missouri Coalition for the Environment (“MCE”) hereby replies to Ameren’s Answer Opposing Missouri Coalition for the Environment’s Hearing Request and Motion to Reopen the Record (Dec. 18, 2014) (“Ameren Answer”) and NRC Staff Answer to Missouri Coalition for the Environment’s Hearing Request and Petition to Intervene and Motion to Reopen the Record in the License Renewal Proceeding for Callaway Unit 1 Nuclear Power Plant (Dec. 18, 2014) (“NRC Staff Answer”). Both Ameren and the Staff oppose Missouri Coalition for the Environment’s Hearing Request and Petition to Intervene in the License Renewal Proceeding for Callaway Nuclear Power Plant (Dec. 8, 2014) (“MCE Hearing Request”) and Motion to Reopen the Record (Dec. 8, 2014) (“Motion to Reopen”).

In its Hearing Request, MCE made clear that its contention was filed as a place-holder, for the purpose of ensuring that the U.S. Nuclear Regulatory Commission (“NRC”) will apply to Callaway Unit 1 any decision by the U.S. Court of Appeals for the D.C. Circuit in the now-pending challenge to the legal validity of the Continued Storage of Spent Fuel Rule (79 Fed. Reg. 56,238 (Sept. 19, 2014)) (“Continued Spent Fuel Storage Rule”) and the Generic Environmental Impact Statement for Continued Storage of Spent Nuclear Fuel (NUREG-2157,

Sept. 2014) (“Continued Spent Fuel Storage GEIS”). MCE Hearing Request at 1-3. As MCE stated, “The sole purpose of [MCE’s] contention is to lodge a formal challenge to the NRC’s complete and unqualified reliance, in the separate license renewal proceeding for Callaway Unit 1, on the legally deficient Continued Spent Fuel Storage Rule and Continued Spent Fuel Storage GEIS.” *Id.* at 2.

Neither Ameren nor the Staff disputes MCE’s assertion that the filing of a place-holder contention is the only procedural means offered by NRC regulations for ensuring that any court decision resulting from MCE’s appeal of the Continued Spent Fuel Storage Rule and the Continued Spent Fuel Storage GEIS will be applied to the individual Callaway Unit 1 license renewal proceeding, which relies on the Rule and the GEIS. *See* MCE Hearing Request at 2.<sup>1</sup> Nor do they dispute MCE’s assertion that a waiver petition is not necessary to support this generic place-holder contention. MCE Hearing Request at 2 n.3. While they make rote arguments that the contention must be rejected for lack of such a waiver petition (*see* Ameren

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<sup>1</sup> On page 9 of its Answer, Ameren asserts that NRC rules do not contemplate “placeholder” filings and cites to the Commission’s decision in *Millstone* for support. Ameren, however, misconstrues the *Millstone* decision. In *Millstone*, the NRC held that a petitioner could not file general, vague, or unsupported claims in a “placeholder” contention, *with the intent to elaborate on those claims at some later time*. 69 NRC at 120 and note 21. MCE does not dispute that holding. Importantly, MCE’s contention is not an attempt to file a vague claim that can be elaborated upon later. Rather, MCE’s contention needs no further elaboration – its sole purpose is to lodge a formal challenge to the NRC’s complete and unqualified reliance, in the separate license renewal proceeding for Callaway Unit 1, on the legally deficient Continued Spent Fuel Storage Rule and Continued Spent Fuel Storage GEIS. As discussed above, the filing of a contention is the only procedural means offered by Commission regulations for ensuring 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. Thus, the contention is a placeholder for resolution of the court proceeding and not for the filing of a more detailed contention as in *Millstone*.

Answer at 8; NRC Staff Answer at 12), they never rebut MCE’s argument that such a petition would serve no purpose because MCE does not seek to litigate its place-holder contention.<sup>2</sup>

Nevertheless, Ameren and the Staff do raise a new issue that warrants a response: whether the Hearing Request and Motion to Reopen are “timely” under 10 C.F.R. § 2.309(c)(1)(i)-(iii). These provisions require a demonstration that the “information upon which the filing is based” was “not previously available” and “is materially different from information previously available;” and that the filing “has been submitted in a timely fashion based on the availability of the subsequent information.” Ameren and the Staff argue that the “information” on which MCE’s Hearing Request and Motion to Reopen are based is the NRC’s announcement in the Continued Spent Fuel Storage Rule that the impact determinations in the GEIS are “deemed incorporated” into site-specific environmental impact statements. *Id.* Therefore they contend the Hearing Request and Motion to Reopen are untimely because MCE could have submitted them at the time the NRC issued the Rule and GEIS. *See* Ameren Answer at 10

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<sup>2</sup> By summarizing and incorporating into MCE’s contention its 2013 comments on the Continued Spent Fuel Storage Rule and Continued Spent Fuel Storage GEIS, MCE inadvertently included the following site-specific language:

The GEIS fails to fully consider the environmental impacts of spent fuel pool leaks and fires. In violation of NEPA, the GEIS relies upon incomplete data, adopts a flawed concept of risk, ignores a range of causes for accidents, *and fails to assess certain site specific features that could increase the impacts of a leak or fire.*

MCE Hearing Request at 8 (emphasis added). *See also* Ameren Answer at 9. MCE hereby strikes that language from its contention, which was not intended to raise any site-specific concerns. Accordingly, that claim should now read:

The GEIS fails to fully consider the environmental impacts of spent fuel pool leaks and fires. In violation of NEPA, the GEIS relies upon incomplete data, adopts a flawed concept of risk, and ignores a range of causes for accidents.

(citing *Entergy Nuclear Generation Co. (Pilgrim Nuclear Power Station)*, CLI-12-21, 76 NRC 491, 498 (2012); *Entergy Nuclear Generation Co. (Pilgrim Nuclear Power Station)*, CLI-12-10, 75 NRC 479, 492-93 (2012)).

The issue of timeliness, however, may not be interpreted in a manner that negates the NRC's standards for admissibility of contentions. These standards are "strict." *Entergy Nuclear Generation Co. (Pilgrim Nuclear Power Station)*, CLI-12-15, 75 NRC 704, 709 (2012). They include the requirement in 10 C.F.R. § 2.309(f)(1)(vi) that a contention must raise a dispute with the license application, including the applicant's environmental report. After the deadline for initial filing of contentions has passed, a petitioner may also challenge amendments to the environmental report, the draft EIS, or the final EIS for the facility. 10 C.F.R. § 2.309(f)(2). Under no circumstances, however, do the regulations excuse a petitioner's contention from raising a specific dispute with a licensing document for the facility. "Any contention that fails directly to controvert the application or that mistakenly asserts the application does not address a relevant issue will be dismissed." *Strata Energy, Inc. (Ross In Situ Uranium Recovery Project)*, LBP-12-03, 75 NRC 164, 192 (2012) (citing *Crow Butte Resources, Inc. (North Trend Expansion Project)*, CLI-09-12, 69 NRC 535, 557 (2009); *USEC, Inc. (American Centrifuge Plant)*, CLI-06-10, 63 NRC 451, 462-63 (2006)).

At the time the NRC issued the Continued Storage Rule, it would not have been possible for MCE's contention to comply with 10 C.F.R. § 2.309(f)(1)(vi), because the Draft Supplement 51 to the Generic Environmental Impact Statement for License Renewal of Nuclear Plants (Draft for Comment (Jan. 2014)) (ML14041A373) ("Draft SEIS") made no reference to the Continued Storage Rule or Continued Storage GEIS. MCE was not able to dispute the adequacy of the

Callaway Unit 1 FSEIS, as required by 10 C.F.R. § 2.309(f)(1)(vi), until November 2014 when NRC published the FSEIS with language incorporating the Continued Spent Fuel Storage Rule and GEIS by reference.

Finally, Ameren and the NRC Staff err by implicitly assuming that by announcing in the Continued Spent Fuel Storage GEIS that the GEIS is deemed incorporated into individual reactor EISs, the NRC has changed the Callaway Unit 1 FSEIS to incorporate the GEIS. They overlook NRC regulations which make it clear that the act of incorporating general statements by reference into a specific environmental impact statement does not occur until the NRC actually makes changes to the specific EIS:

Agencies shall incorporate material into an environmental impact statement by reference when the effect will be to cut down on bulk without impeding agency and public review of the action. *The incorporated material shall be cited in the statement and its content briefly described.*

10 C.F.R. Part 51, Subpart A, Appendix A, Section (b), note 1 and Discussion of footnotes (quoting 40 C.F.R. § 1502.21) (emphasis added). The NRC did not comply with this regulatory notice requirement for Callaway Unit 1 until it published the FSEIS in November.<sup>3</sup>

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<sup>3</sup> MCE notes that the NRC has yet to comply with 10 C.F.R. Part 51, Subpart A, Appendix A, Section (b) for any of the other license renewal and initial reactor licensing proceedings where it intends to rely on the Continued Spent Fuel Storage Rule and Continued Spent Fuel Storage GEIS for reactor licensing and re-licensing decisions.

For the reasons stated above, and in the Hearing Request and Motion to Reopen, MCE respectfully requests that its contention be admitted.

Respectfully submitted,

*[Electronically signed by]*

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December 29, 2014

## **CERTIFICATE OF SERVICE**

I certify that on December 29, 2012, I posted the foregoing Missouri Coalition for the Environment's Reply to Oppositions to Hearing Request/Petition to Intervene and Motion to Reopen the Record in License Renewal Proceeding for Callaway Nuclear Power Plant on the NRC's Electronic Information Exchange ("EIE"). It is my understanding that e-filing of these documents will ensure their delivery to the Office of the Secretary, counsel for the NRC Staff, and counsel for the applicant.

*(Electronically signed by)*

Diane Curran