

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

COMMISSIONERS:

Stephen G. Burns, Chairman
Kristine L. Svinicki
William C. Ostendorff
Jeff Baran

In the Matter of

UNION ELECTRIC COMPANY

(Callaway Nuclear Power Plant, Unit 1)

Docket No. 50-483-LR

CLI-15-11

MEMORANDUM AND ORDER

Missouri Coalition for the Environment (MCE) moves to reopen the record of this proceeding. MCE seeks a hearing on its claim that the final supplemental environmental impact statement prepared in connection with this license renewal application violates the National Environmental Policy Act by failing to consider environmental impacts associated with the continued storage of spent nuclear fuel.¹ For the reasons discussed below, MCE's request is denied.

I. BACKGROUND

MCE sought to intervene early on in this license renewal proceeding. In its initial petition, MCE proffered three contentions that ultimately were rejected by the Atomic Safety and

¹ *Missouri [Coalition] for the Environment's Hearing Request and Petition to Intervene in License Renewal Proceeding for Callaway Nuclear Power Plant* (Dec. 8, 2014) (Petition); *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).

Licensing Board.² Subsequently, our 2010 Waste Confidence Decision and Temporary Storage Rule were vacated by the court of appeals and remanded to the agency.³ In response, MCE, together with several other petitioners, filed requests to suspend final licensing decisions in this and other proceedings pending completion of our action on the remanded Waste Confidence proceeding.⁴ We suspended final licensing decisions until we addressed the court's remand and instructed the boards in the affected proceedings to hold the contentions in abeyance pending our further order.⁵ Thereafter, concurrent with our approval last year of the final Continued Storage Rule and companion Generic Environmental Impact Statement (GEIS), we lifted the suspension on final licensing decisions and directed that the proposed contention in this matter (among others) be dismissed.⁶ We observed that, "[a]s part of the analysis

² See LBP-12-15, 76 NRC 14 (2012). MCE did not appeal this decision.

³ See *New York v. NRC*, 681 F.3d 471 (D.C. Cir. 2012).

⁴ *Petition to Suspend Final Licensing Decisions in All Pending Reactor Licensing Proceedings Pending Completion of Remanded Waste Confidence Proceedings* (June 18, 2012). MCE also filed a fourth contention asserting that the applicant's environmental report improperly failed to address the environmental impacts associated with spent fuel pool leaks and fires, and the lack of a permanent spent fuel disposal facility. *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, 2012).

⁵ *Calvert Cliffs 3 Nuclear Project, LLC and UniStar Nuclear Operating Services, LLC* (Calvert Cliffs Nuclear Power Plant, Unit 3), CLI-12-16, 76 NRC 63 (2012). At that time, we observed, "[t]o the extent the NRC takes action with respect to waste confidence on a case-by-case basis, litigants can challenge such site-specific agency actions in our adjudicatory process." *Id.* at 67 (but citing *Potomac Electric Power Co.* (Douglas Point Nuclear Generating Station, Units 1 and 2), ALAB-218, 8 AEC 79, 85 (1975) ("[L]icensing boards should not accept in individual license proceedings contentions which are (or are about to become) the subject of general rulemaking by the Commission.")).

⁶ See NUREG-2157, Vols. 1 & 2, *Generic Environmental Impact Statement for Continued Storage of Spent Nuclear Fuel* (Sept. 2014) (ADAMS accession nos. ML14196A105 and ML14196A107) (Continued Storage GEIS); Final Rule, Continued Storage of Spent Nuclear Fuel, 79 Fed. Reg. 56,238 (Sept. 19, 2014) (Continued Storage Rule); *Calvert Cliffs 3 Nuclear Project, LLC, and UniStar Nuclear Operating Services, LLC* (Calvert Cliffs Nuclear Power Plant, Unit 3), CLI-14-8, 80 NRC 71, 77-79 (2014). The Staff issued the renewed license on March 6, 2015. See Ghosh, Anita, Counsel for NRC Staff, letter to the Parties, "In the Matter of Union (continued . . .)

underpinning the GEIS . . . we concluded that the impacts of continued storage will not vary significantly across sites; the impacts of continued storage at reactor sites, or at away-from-reactor sites, can be analyzed generically.”⁷ For this reason, these generic determinations were appropriately excluded from litigation in individual proceedings.⁸

MCE now has filed a fresh intervention petition in which it argues that the recently released final supplemental environmental impact statement for license renewal of the Callaway plant is inherently flawed because it relies on the NRC’s generic analysis, in the Continued Storage Rule and GEIS, of the environmental impacts of the continued storage of spent fuel.⁹ The NRC Staff and the applicant, Union Electric Company, doing business as Ameren Missouri, oppose the hearing request.¹⁰

II. DISCUSSION

MCE seeks to lodge with us a “placeholder” contention.¹¹ MCE does not seek to litigate the substance of its contention now and candidly acknowledges that our rules of practice do not allow litigants to challenge our regulations within the context of individual license proceedings,

Electric Co. (Callaway Nuclear Power Plant, Unit 1), Docket No. 50-483-LR, Notification of Commission Authorization to Issue Renewed License” (Mar. 6, 2015).

⁷ *Calvert Cliffs*, CLI-14-8, 80 NRC at 78. We stated additionally that “the assumptions used in the analysis are sufficiently conservative to bound the impacts such that variances that may occur between sites are unlikely to result in environmental impact determinations greater than those presented in the [Continued Storage] GEIS.” *Id.* (citation omitted).

⁸ *Id.* at 79.

⁹ See NUREG-1437, Generic Environmental Impact Statement for License Renewal, Supp. 51 (Regarding Callaway Plant, Unit 1) (ML14289A140) (Oct. 2014), at 1-4 to 1-5, 6-3.

¹⁰ See *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); *Ameren’s Answer Opposing Missouri Coalition for the Environment’s Hearing Request and Motion to Reopen the Record* (Dec. 18, 2014).

¹¹ Petition at 2.

absent a request for a waiver.¹² MCE's stated reason for filing its petition and motion to reopen is to ensure that any court decision resulting from its federal court challenge to the Continued Storage Rule and GEIS will also be applied to the individual *Callaway* proceeding.¹³

MCE is correct that the proposed contention is not admissible under our rules of practice because it impermissibly challenges an agency regulation and is therefore outside the scope of this individual licensing proceeding.¹⁴ MCE provides seven bases for its contention, all of which challenge the generic findings in the GEIS.¹⁵ None of the contention's bases pertain specifically to the Callaway license renewal application. The contention therefore does not provide sufficient information to demonstrate a genuine dispute with the applicant on a material issue.¹⁶ For these reasons, we decline to admit the contention.¹⁷

In MCE's view, its "placeholder contention" is "the only procedural means" available for ensuring that any court decision resulting from the pending appeal of the Continued Storage

¹² See *id.* at 2 & 2-3 n.3. MCE does not seek a rule waiver. *Id.*

¹³ *Id.* at 2. MCE has challenged the Continued Storage Rule and Continued Storage GEIS in the U.S. Court of Appeals for the District of Columbia Circuit. *Beyond Nuclear v. NRC*, Docket No. 14-1216 (D.C. Cir. filed Oct. 29, 2014). As MCE notes in its hearing request, its petition for review has been consolidated with similar petitions before the D.C. Circuit and the case is now captioned *New York v. NRC*, Docket Nos. 14-1210, 14-1216, and 14-1217 (D.C. Cir. Oct. 31, 2014). MCE states that, should we decline to admit its contention, it will ask the court to consolidate its challenge here with its pending appeal. Petition at 2-3.

¹⁴ See, e.g., *Calvert Cliffs*, CLI-14-8, 80 NRC at 79; *Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2, and 3), CLI-99-11, 49 NRC 328, 345 (1999).

¹⁵ See Petition at 7-9.

¹⁶ 10 C.F.R. § 2.309(f)(1)(vi).

¹⁷ Because MCE has not submitted an admissible contention, it necessarily has not satisfied our reopening standards because it has not raised a significant environmental issue and has not demonstrated that a materially different result would be likely if the contention had been considered initially. 10 C.F.R. § 2.326(a)(2)-(3). Because MCE's contention is inadmissible, we need not address the timeliness of its filing, a matter of some debate among the litigants.

Rule and GEIS will be applied to the Callaway license renewal matter.¹⁸ However, MCE cannot litigate the Continued Storage Rule and GEIS here. We addressed the environmental impacts of continued storage generically, via the rulemaking process, in accordance with NEPA and general principles of administrative law.¹⁹ MCE had—and took advantage of—the opportunity to provide comments on the proposed rule and draft GEIS.²⁰ Now that the rule has been adopted, MCE has sought review of the rule and GEIS in the appropriate venue, the court of appeals. Absent a successful petition that the rule should be waived in accordance with 10 C.F.R. § 2.335, MCE’s challenges to the Continued Storage Rule and GEIS are appropriately brought before the court of appeals. Should the D.C. Circuit find any infirmities in the Continued Storage Rule or GEIS, we would take appropriate action consistent with the court’s direction. In the meantime, however, admission of a “placeholder” contention is not necessary to ensure that MCE’s challenges to the Continued Storage Rule and GEIS receive a full and fair airing.²¹

¹⁸ *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*, 2 (Dec. 29, 2015).

¹⁹ *New York*, 681 F.3d at 483 (declining to grant the petitioners’ request that the NRC consider continued storage on a site-by-site basis); see also *NLRB v. Bell Aerospace Co. Div. of Textron, Inc.*, 416 U.S. 267, 294 (1974) (agency had discretion to choose between rulemaking and adjudication); *SEC v. Chenery Corp.*, 332 U.S. 194, 203 (1947) (“the choice made between proceeding by general rule or by individual, ad hoc litigation is one that lies primarily in the informed discretion of the administrative agency”).

²⁰ See Continued Storage GEIS at D-596.

²¹ *Cf. Entergy Nuclear Generation Co. and Entergy Nuclear Operations, Inc.* (Pilgrim Nuclear Power Station), CLI-12-6, 75 NRC 352, 372-76 (2012) (declining a suspension request filed by the intervenor to “protect its position” and eventually enable it to litigate challenges to a final supplemental EIS following resolution of a rulemaking petition).

III. CONCLUSION

For the foregoing reasons, we *deny* MCE's motion to reopen the record of this proceeding and admit a new contention.

IT IS SO ORDERED.

For the Commission

NRC SEAL

/RA/

Annette L. Vietti-Cook
Secretary of the Commission

Dated at Rockville, Maryland,
this 23rd day of April, 2015

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)
(License Renewal))

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **COMMISSION MEMORANDUM AND ORDER (CLI-15-11)** have been served upon the following persons by Electronic Information Exchange.

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Callaway Power Plant, Unit 1, Docket No. 50-483-LR
COMMISSION MEMORANDUM AND ORDER (CLI-15-11)

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[Original signed by Herald M. Speiser]
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Dated at Rockville, Maryland,
this 23rd day of April, 2015