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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF SECURITY
RULEMAKING AND
ADJUDICATIONS STAFF

In the Matter of)	Docket Nos. 50-317-LR
)	50-318-LR
BALTIMORE GAS & ELECTRIC)	
COMPANY)	License Renewal Application
)	
(Calvert Cliffs Nuclear Plant,)	
Units 1 and 2))	

NRC STAFF'S RESPONSE TO STATUS REPORT AND
PETITIONER'S MOTION TO BE INFORMED OF
COMMUNICATION BETWEEN NRC STAFF AND APPLICANT

INTRODUCTION

Pursuant to 10 C.F.R. § 2.730(c) and the Atomic Safety and Licensing Board's order dated October 2, 1998 (October Order), the staff of the Nuclear Regulatory Commission (Staff) hereby responds to the "Status Report" and "Petitioner's Motion Requesting To Be Informed of Communication Between the NRC Staff and Applicant" (Communication Motion) filed by the National Whistleblower Center (Petitioner) in the above captioned proceeding. For the reasons set forth below, the Petitioner has failed to meet the requirements of 10 C.F.R. § 2.714(b). Thus, the Petitioner's August 7, 1998 Petition to Intervene and Request for Hearing should be denied. Further, the Petitioner's Communication Motion should also be denied.

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BACKGROUND

On August 27, 1998, the Atomic Safety and Licensing Board (Board) designated in the above-captioned proceeding issued a "Memorandum and Order" (Denying Time Extension Motion and Scheduling Prehearing Conference), in which the Board denied the Petitioner's request to delay the submission of contentions in this proceeding from September 11, 1998, to November 15, 1998, at the earliest.¹ The Board also scheduled a prehearing conference for October 15-16, 1998.

On September 11, 1998, the Petitioner did not file a list of proposed contentions, but instead filed with the Commission a "Petition for Review" of the Board's denial of its motion and, with the Board, "Petitioner's Filing in Response to the Board's Initial Prehearing Order." On September 17, 1998, the Commission provided the Petitioner until September 30, 1998, to file contentions. *Baltimore Gas & Electric Co.* (Calvert Cliffs Nuclear Plant, Units 1 and 2), CLI-98-19, 48 NRC ____, slip op. (Sept. 17, 1998). Subsequently, on September 18, 1998, the Petitioner filed "Petitioner's Motion to Vacate Pre-Hearing Conference or in Alternative for an Extension of Time." On September 21, 1998, the Board denied Petitioner's motion to vacate and granted Petitioner's request for a one-day extension to file contentions. "Memorandum and Order (Scheduling Matters and Electronic Hearing Database)," September 21, 1998. In that Memorandum and Order, the Board also provided that the Applicant and the Staff could respond to any intervention petition supplement by November 2, 1998, and that the prehearing conference would be held

¹ Specifically, the Petitioner requested that the prehearing conference be scheduled for the first week of December and that its list of proposed contentions be filed 15 days prior to that time. Petitioner's Motion for Enlargement of Time, August 21, 1998 at 5.

during the week of November 9, 1998. On September 29, 1998, the Board issued an "Order" (Revised Prehearing Conference Schedule) in which it set the prehearing conference for November 12-13, 1998.

On October 1, 1998, instead of filing a supplement to its petition containing a list of proposed contentions, the Petitioner filed a Status Report and the Communication Motion.² Subsequent to its October 1, 1998, filings, the Petitioner filed "Petitioner's Notice of Filing" on October 7, 1998.³ As discussed below, since the Petitioner's Status Report does not contain a list of proposed contentions, its August 7, 1998 Petition to Intervene and Request for Hearing should be denied. Further, for the reasons set forth below, the Petitioner's Communication Motion should also be denied.

² Also on October 1, 1998, the Petitioner filed "Petitioner's Motion to Vacate and Re-Schedule the Pre-Hearing Conference" (Motion to Vacate) and "The National Whistleblower Center's Reply to the NRC Staff and BGE's Answer to NWC's Petition to Intervene and Request for Hearing." The Staff is separately responding to these filings in accordance with the deadlines set by the Board's October Order.

³ On October 8, 1998, the Board issued an Order (Schedule for Responses to Petitioner's Notice of Filing), in which the Board directed that if the Staff and the Applicant wished to address the matters discussed in the Petitioner's Notice of Filing, they should do so as part of their responses currently due on October 9, 1998. Thus, in accordance with the Board's order, the Staff will address the matters raised in the Petitioner's filing as referenced in this response and in its Answer in Opposition to Petitioner's Motion to Vacate and Re-schedule the Pre-hearing Conference.

DISCUSSION

A. Staff's Response to Status Report

Pursuant to 10 C.F.R. § 2.714(b), a petitioner must provide at least one admissible contention in order to be allowed to intervene in a proceeding. 10 C.F.R. § 2.714(b)(1); *Yankee Atomic Electric Company* (Yankee Nuclear Power Station), CLI-96-7, 43 NRC 235, 248 (1996). For a contention to be admitted, it must meet the standards set forth in 10 C.F.R. § 2.714(b)(2), which provide that each contention must consist of "a specific statement of the issue of law or fact to be raised or controverted" and must be accompanied by:

- (i) A brief explanation of the bases of the contention;
- (ii) A concise statement of the alleged facts or expert opinion which supports the contention . . . together with references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion;
- (iii) Sufficient information . . . to show that a genuine dispute exists with the applicant on a material issue of law or fact.

10 C.F.R. § 2.714(b)(2). The failure to comply with any one of these requirements is grounds for dismissing the contention. 10 C.F.R. § 2.714(d)(2)(i); *Arizona Public Service Company* (Palo Verde Nuclear Generating Station, Units 1, 2, and 3), CLI-91-12, 34 NRC 149, 155-56 (1991). Further, a contention must also be dismissed where the "contention, if proven, would be of no consequence . . . because it would not entitle [the] petitioner to relief." 10 C.F.R. § 2.714(d)(2)(ii).

Pursuant to section 2.714, a petitioner must provide a "clear statement as to the basis for the contentions and the submission of . . . supporting information and references to

specific documents and sources that establish the validity of the contention." *Palo Verde*, CLI-91-12, 34 NRC at 155-56. As summarized by the Commission:

For a contention to be admissible, a petitioner must refer to the specific portion of the license application being challenged, state the issue of fact or law associated with that portion, and provide a "basis" of alleged facts or expert opinions, together with references to specific sources and documents that establish those facts or expert opinions. The basis must be sufficient to show that a genuine dispute exists on a material issue of fact or law.

Yankee Nuclear, CLI-96-7, 43 NRC at 248-49.

The Petitioner, here, fails to provide any contentions in its Status Report. Rather, the Petitioner provides several "areas of concern."⁴ None of these "areas of concern," however, meets the requirements of section 2.714(b) as described above. In fact, the Petitioner itself proclaims that these "areas of concern" are not intended to be contentions, stating that the "preliminary outline of issues is not intended to be a filing of contentions or basis for the contentions." See Status Report at 2, 10 (emphasis in the original).

The Petitioner attempts to excuse its refusal to abide by the orders of the Board and the Commission by asserting that under the Commission's regulations, it has fifteen days before the Prehearing conference to file its contentions. Status Report at 1. Thus, the Petitioner asserts, the current deadline for filing its contention would be October 28, 1998. *Id.* The Petitioner has made this assertion previously both before the Board and the Commission in an attempt to avoid filing contentions in this proceeding. See, e.g. Petitioner's Motion for Enlargement of Time at 4 and Petition for Review at 6-8. The

⁴ The term "area of concern" has no meaning in the context of a proceeding conducted under Subpart G of 10 C.F.R. Part 2. Rather, the term is used in the context of an informal proceeding established pursuant to Subpart L of the Commission's Rules of Practice. See 10 C.F.R. § 2.1205(e).

Petitioner makes this argument again in its Motion to Vacate filed on the same day as the Status Report. As discussed in more detail in the Staff's response to the Motion to Vacate, the Commission has held that the Board has the authority to modify general deadlines set out in the Commission's regulations. See NRC Staff's Answer in Opposition to Petitioner's Motion to Vacate and Re-schedule the Pre-hearing Conference at 8-10. See also *Calvert Cliffs*, CLI-98-19, 48 NRC ____, slip op. at 3. The Commission also stated in CLI-98-19 that if contentions were filed after September 30 (October 1, by virtue of the Board's order of September 21), the Petitioner would have to address the late-filed contention criteria of section 2.714(a)(1) and that the Board should "be prepared to terminate the adjudication promptly should [the Petitioner] submit no admissible contentions." *Id.* at 2.

The Petitioner, in its Status Report, flouts the Commission's holding in this regard and merely repeats its argument without any discussion on why the Commission's ruling in this matter should not be followed here. Since the Petitioner has failed to file any contentions within the time set by the Board, the Board should deny the Petitioner's August 7, 1998 Petition to Intervene and Request for Hearing and terminate this proceeding.

B. Staff Response to Communication Motion

Also on October 1, 1998, the Petitioner filed its Communication Motion, requesting that it and the Board be included on the service list for "all written communications directly or indirectly related to Applicant's pending license renewal application for Calvert Cliff's Nuclear Power Plant, Units 1 and 2." Communication Motion at 1. The Petitioner also requests to receive written notification of all status meetings concerning the application. *Id.* The Petitioner claims that it is essential to its ability to participate in this proceeding to

receive such communications and that failure to receive them is harmful to it. *Id.* The Petitioner raises these same matters, again, in its Notice of Filing. *See* Notice of Filing at 4-5.

With respect to written communications, the Petitioner asserts that due to the strict time constraints in this proceeding, it is harmed by a delay between the time a request for information (RAI) is sent and when that RAI is placed in the NRC's public document room (PDR). *See* Communication Motion at 1, Notice of Filing at 4-5. The Petitioner, however, does not explain how this delay causes it harm. Nor is the harm readily apparent, since the Staff's review, including RAIs, is not the subject of this proceeding. *See Curators of the University of Missouri*, CLI-95-8, 41 NRC 386, 395-396 (1995); *see also* 10 C.F.R. § 2.732.

Regarding notices of meetings between the Applicant and the Staff, information about public meetings is available on the NRC's website.⁵ As acknowledged by the Petitioner in its Notice of Filing, NRC meetings are open to interested members of the public and the Petitioner is welcome to attend.⁶ *See* Notice of Filing at 5. Based on the above, the Petitioner's Communication Motion lacks merit and should be denied.

Nevertheless, the Staff will place the Petitioner, as an interested person, on its distribution list for its correspondence to the Applicant related to the Calvert Cliffs license renewal application and for notices of meetings between the Staff and the Applicant regarding the license renewal application. The Staff does not agree to provide the Petitioner

⁵ The Petitioner does not assert that it is harmed by the fact that it is not on the distribution list for public meetings. *See* Communication Motion at 1; Notice of Filing at 5.

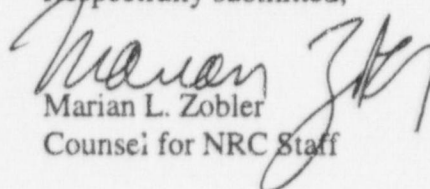
⁶ The Petitioner's assertion, in its Notice of Filing, that it is an "intervenor" in this proceeding is erroneous in any event. *See* 10 C.F.R. § 2.714(b).

with copies of correspondence from the Applicant. All such correspondence is, in any event, available in the public document room in Washington, D.C. as well as at the local public document room at the Calvert County Public Library, Prince Frederick, Maryland.

CONCLUSION

Since the Petitioner's Status Report fails to contain at least one admissible contention, as discussed above, the Petitioner's August 7, 1998 Petition to Intervene and Request for Hearing should be denied and this proceeding should be terminated. Further, the Petitioner's Communication Motion should be denied. The Staff, however, agrees to place the Petitioner on its distribution list for its correspondence with the Applicant related to the Calvert Cliffs license renewal application and for notices of meetings between the Staff and the Applicant regarding the application.

Respectfully submitted,


Marian L. Zabler
Counsel for NRC Staff

Dated at Rockville, Maryland
this 9th day of October, 1998

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD 98 OCT 13 A11 :49

In the Matter of)
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BALTIMORE GAS & ELECTRIC) Docket Nos. 50-317-LR
COMPANY) 50-318-LR
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) License Renewal Application
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Units 1 and 2))

OFFICE OF SECRETARY
RULEMAKING AND
ADJUDICATIONS STAFF

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S RESPONSE TO STATUS REPORT AND PETITIONER'S MOTION TO BE INFORMED OF COMMUNICATION BETWEEN NRC STAFF AND APPLICANT" in the above-captioned proceeding have been served on the following by electronic mail, with conforming copies deposited in Nuclear Regulatory Commission internal mail system, or as indicated by an asterisk, by e-mail with conforming copies deposited in United States mail, first class, or as indicated by a double asterisk by deposit in NRC internal mail system, this 9th day of October, 1998:

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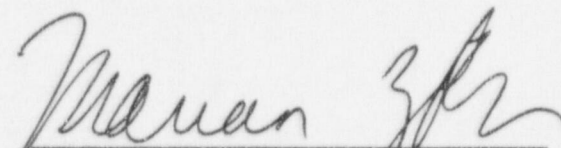
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