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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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Before the Commission

OFFICE OF SECRETARY
RULEMAKING AND
ADJUDICATIONS STAFF

In the Matter of)	
)	
Baltimore Gas and Electric Company)	Docket Nos. 50-317-LR
)	50-318-LR
)	
(Calvert Cliffs Nuclear Power Plant,)	ASLBP No. 98-749-01-LR
Units 1 and 2))	

**BALTIMORE GAS AND ELECTRIC COMPANY'S BRIEF
IN OPPOSITION TO THE
APPEAL OF THE NATIONAL WHISTLEBLOWER CENTER**

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TABLE OF CONTENTS

	Page
Table of Contents.....	i
Table of Authorities.....	iii
Introduction.....	1
Statement of Case	2
Argument	12
I. The Commission Has Broad Authority to Regulate the Conduct of Its Adjudicatory Proceedings.....	12
A. The Licensing Board's Schedule for the Filing of Contentions and the Prehearing Conference Was Lawful and Appropriate	13
B. NWC Has No Right to Review Requests for Additional Information or Responses Prior to Submitting Contentions	17
C. There Is No NRC Requirement to Serve a Petitioner Copies of Correspondence between the Applicant and the NRC Staff.....	20
D. There Was No Justification for NWC's Refusal to Comply with the October 1 Contentions Deadline	22
II. NWC Was Properly Dismissed Because It Failed to Submit Admissible Contentions	24
A. NWC's Failure to Address the Late-Filing Criteria Warrants Its Dismissal	24
B. NWC's Contentions Failed to Meet the Basis and Specificity Requirements.....	26
C. NWC Had No Right to a Prehearing Conference Without Timely and Properly Supported Contentions.....	28
III. NWC's Dismissal Should Also Be Sustained For NWC's Failure To Establish Its Standing or Identify Aspects.....	29
A. NWC Lacks Standing	29
B. NWC has Failed to Identify Specific Aspects of the Subject Matter on Which it Wished to Intervene	33

IV. While NWC's Challenges To the Commission's July 28 Policy Statement and August 19 Order Are Irrelevant, Both the Policy Statement and Order Are Lawful 34

 A. NWC's Complaints Are Irrelevant 35

 B. NWC's Complaints Lack Merit 36

Conclusion 40

TABLE OF AUTHORITIES

Cases

<u>Action on Smoking & Health v. Dep't of Labor</u> , 100 F.3d 991 (D.C. Cir. 1996).....	32, 33
<u>Arizona Public Service Co.</u> (Palo Verde Nuclear Generating Station, Units 1, 2, and 3), LBP-91-4, 33 N.R.C. 153 (1991).....	34
<u>Boston Edison Co.</u> (Pilgrim Nuclear Power Station), ALAB-816, 22 N.R.C. 461 (1985).....	24, 25, 28, 29
<u>Carolina Power & Light Co.</u> (Shearon Harris Nuclear Power Plant, Units 1 and 2), LBP-82-119A, 16 N.R.C. 2069 (1982).....	22
<u>City of West Chicago v. NRC</u> , 701 F.2d 632 (7th Cir. 1983).....	39
<u>Cleveland Electric Illuminating Co.</u> (Perry Nuclear Power Plant, Units 1 & 2), App. to LBP-81-24, 14 N.R.C. 235 (1981).....	17
<u>Commonwealth Edison Co.</u> (Braidwood Nuclear Power Station, Units 1 and 2), CLI-86-8, 23 N.R.C. 241 (1986).....	28
<u>Community Nutrition Inst. v. Young</u> , 818 F.2d 943 (D.C. Cir. 1987)	38
<u>Duke Power Co.</u> (William B. McGuire Nuclear Station, Units 1 and 2), ALAB-143, 6 A.E.C. 623 (1973)	22
<u>Duke Power Co.</u> (Perkins Nuclear Station, Units 1, 2 and 3), ALAB-615, 12 N.R.C. 350 (1980)	25
<u>Duke Power Co.</u> (Catawba Nuclear Station, Units 1 and 2), LBP-82-16, 15 N.R.C. 566 (1982)	22
<u>Duke Power Co.</u> (Catawba Nuclear Station, Units 1 and 2), ALAB-687, 16 N.R.C. 460 (1982)	36
<u>Duke Power Co.</u> (Catawba Nuclear Station, Units 1 and 2), ALAB-687, 16 N.R.C. 460 (1982), <u>vacated in part on other grounds</u> , CLI-83-19, 17 N.R.C. 1041 (1983).....	27, 36
<u>Duke Power Co.</u> (Catawba Nuclear Station, Units 1 and 2), CLI-83-19, 17 N.R.C. 1041 (1983)	19
<u>Duke Power Co. v. NRC</u> , 770 F.2d 386 (4th Cir. 1985).....	12
<u>Florida Power and Light Co.</u> (Turkey Point Nuclear Generating Plant, Units 3 and 4), LBP-85-36, 22 N.R.C. 590 (1985).....	17
<u>Florida Power and Light Co.</u> (Turkey Point Nuclear Generating Plant, Units 3 and 4), CLI-91-13, 34 N.R.C. 185 (1991).....	35
<u>General Electric Co.</u> (GETR Vallecitos), LBP-83-19, 17 N.R.C. 573 (1983).....	17
<u>Georgia Power Co.</u> (Vogtle Electric Generating Plant, Units 1 and 2), LBP-90-29, 32 N.R.C. 89 (1990).....	17
<u>Georgia Power Co.</u> (Vogtle Electric Generating Plant, Units 1 and 2), LBP-94-16, 39 N.R.C. 257 (1994).....	5
<u>Health Research Group v. Kennedy</u> , 82 F.R.D. 21 (D. D.C. 1979).....	32

<u>Houston Lighting and Power Co.</u> (Allens Creek Nuclear Generating Station, Unit 1), ALAB-565, 10 N.R.C. 521 (1979).....	17
<u>Houston Lighting and Power Co.</u> (Allens Creek Nuclear Generating Station, Unit 1), ALAB-574, 11 N.R.C. 7 (1980).....	7, 17
<u>Humane Soc'y of the United States v. Hodel</u> , 840 F.2d 45 (D.C. Cir. 1988).....	30, 31
<u>Hunt v. Washington State Apple Adver. Comm'n</u> , 432 U.S. 333 (1977).....	30
<u>Long Island Lighting Co.</u> (Shoreham Nuclear Power Station, Unit 1), ALAB-832, 23 N.R.C. 135 (1986).....	29
<u>Long Island Lighting Co.</u> (Shoreham Nuclear Power Station, Unit 1), CLI-88-9, 28 N.R.C. 567 (1988).....	37
<u>Louisiana Energy Services, L.P.</u> (Claiborne Enrichment Center), LBP-91-41, 34 N.R.C. 332 (1991).....	27
<u>Medical Ass'n of Alabama v. Schweiker</u> , 554 F. Supp. 955 (M.D. Ala.), <u>aff'd</u> , 714 F.2d 107 (11th Cir. 1983).....	31
<u>Metropolitan Edison Co.</u> (Three Mile Island Nuclear Station, Unit 1), ALAB-772, 19 N.R.C. 1193 (1984), <u>rev'd on other grounds</u> , CLI-85-2, 21 N.R.C. 282 (1985).....	13
<u>North Atlantic Energy Service Corporation</u> (Seabrook Station Unit No. 1), LBP-98-23, 48 N.R.C. ___ (1998).....	28
<u>Northeast Nuclear Energy Co.</u> (Millstone Nuclear Power Station, Unit 2), LBP-92-17, 36 N.R.C. 23 (1992)	16, 17
<u>Northern States Power Co.</u> (Independent Spent Fuel Storage Installation), LBP-96-22, 44 N.R.C. 138 (1996)	17
<u>Northern States Power Co.</u> (Prairie Island Nuclear Generating Plant, Units 1 & 2), ALAB-107, 6 A.E.C. 188, <u>aff'd</u> , CLI-73-12, 6 A.E.C. 241 (1973), <u>aff'd sub nom.</u> , <u>BPI v. AEC</u> , 502 F.2d 424 (D.C. Cir. 1974).....	36
<u>Nuclear Fuel Services, Inc.</u> (West Valley Reprocessing Plant), CLI-75-4, 1 N.R.C. 273 (1975)	24-25
<u>Nuclear Information Resource Service v. NRC</u> , 969 F.2d 1169 (D.C. Cir. 1992)	12
<u>Offshore Power Systems</u> (Floating Nuclear Power Plants), ALAB-489, 8 N.R.C. 194 (1978), <u>cited with approval in Texas Utilities Generating Co.</u> (Comanche Peak Steam Electric Station, Units 1 and 2), CLI-81-36, 14 N.R.C. 1111 (1981).....	15
<u>Pacific Gas and Electric Co.</u> (Diablo Canyon Nuclear Power Plant, Units 1 and 2), LBP-92-27, 36 N.R.C. 196 (1992).....	17
<u>Philadelphia Electric Co.</u> (Limerick Generating Station, Units 1 and 2), ALAB-819, 22 N.R.C. 681 (1985).....	13
<u>Private Fuel Storage, L.L.C.</u> (Independent Spent Fuel Storage Installation), LBP-98-7, 47 N.R.C. 142 (1998) ..	28, 29
<u>Private Fuel Storage, L.L.C.</u> (Independent Spent Fuel Storage Installation), CLI-98-13, 48 N.R.C. ___ (1998)....	30, 31
<u>Public Citizen, Inc. v. NRC</u> , 940 F.2d 679 (D.C. Cir. 1991).....	38
<u>Public Service Co. of Indiana</u> (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-459, 7 N.R.C. 179 (1978).....	16
<u>Public Service Co. of New Hampshire</u> (Seabrook Station, Units 1 and 2), CLI-77-8, 5 N.R.C. 503 (1977)	37

<u>Public Service Co. of New Hampshire</u> (Seabrook Station, Units 1 and 2), CLI-89-3, 29 N.R.C. 234 (1989).....	28
<u>Public Service Co. of New Hampshire</u> (Seabrook Station, Units 1 and 2), CLI-90-3, 31 N.R.C. 219 (1990).....	37
<u>Sacramento Municipal Utility District</u> (Rancho Seco Nuclear Generating Station), CLI-93-3, 37 N.R.C. 135 (1993).....	19, 21-22
<u>Sacramento Municipal Utility District</u> (Rancho Seco Nuclear Generating Station), LBP-92-23, 36 N.R.C. 120 (1992).....	27
<u>Seabrook</u> , CLI-77-8, 5 N.R.C. at 516-17.....	37
<u>Siegel v. AEC</u> , 400 F.2d 778 (D.C. Cir. 1968).....	12
<u>Sierra Club v. Morton</u> , 405 U.S. 727 (1972).....	32
<u>State of New Jersey</u> (Department of Law and Public Safety's Requests Dated October 8, 1993), CLI-93-25, 38 N.R.C. 289 (1993).....	25, 26
<u>Tennessee Valley Authority</u> (Browns Ferry Nuclear Plant, Units 1 and 2), LBP-76-10, 3 N.R.C. 209 (1976).....	27
<u>Tennessee Valley Authority</u> (Browns Ferry Nuclear Plant, Units 1, 2 and 3), ALAB-677, 15 N.R.C. 1387 (1982).....	22
<u>Texas Utilities Electric Co.</u> (Comanche Peak Steam Electric Station, Unit 2), CLI-93-4, 37 N.R.C. 156 (1993).....	25, 26
<u>Union of Concerned Scientists v. NRC</u> , 920 F.2d 50 (D.C. Cir. 1990).....	12
<u>Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council</u> , 435 U.S. 519 (1978).....	12
<u>Wisconsin Electric Power Co.</u> (Point Beach Nuclear Plant, Unit 1), ALAB-696, 16 N.R.C. 1245 (1982).....	36
<u>Yankee Atomic Electric Co.</u> (Yankee Nuclear Power Station), CLI-94-3, 39 N.R.C. 95 (1994).....	30
<u>Yankee Atomic Electric Co.</u> (Yankee Nuclear Power Station), CLI-96-7, 43 N.R.C. 235 (1996).....	12, 27, 33

Regulations and Statutes

5 U.S.C. § 553(b)(3)(A).....	37-38
10 C.F.R. § 2.3.....	16
10 C.F.R. § 2.711.....	passim
10 C.F.R. § 2.711(a).....	14, 16, 36
10 C.F.R. § 2.714.....	passim
10 C.F.R. § 2.714 ^e	1
10 C.F.R. § 2.714(a).....	11, 17, 24
10 C.F.R. § 2.714(a)(1)(i-v).....	25

10 C.F.R. § 2.714(a)(2).....	33
10 C.F.R. § 2.714(a)(3).....	7, 17
10 C.F.R. § 2.714(b).....	14, 15
10 C.F.R. § 2.714(b)(1).....	12, 13, 17
10 C.F.R. § 2.714(c).....	15
10 C.F.R. § 2.714(g).....	34
10 C.F.R. § 2.718.....	passim
10 C.F.R. § 2.740(b)(1).....	36
10 C.F.R. § 2.760a.....	36
37 Fed. Reg. 15,127 (1972).....	14
54 Fed. Reg. 33,168 (1989).....	19, 27
63 Fed. Reg. 20,663 (1988).....	3
63 Fed. Reg. 27,601 (1998).....	18
63 Fed. Reg. 36,966 (1988).....	4, 33
63 Fed. Reg. 45,268 (1998).....	5
<u>Statement of Policy on Adjudicatory Proceedings</u> , CLI-98-12, 63 Fed. Reg. 41,872 (1998).....	passim

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INTRODUCTION

As permitted by 10 C.F.R. § 2.714a, Baltimore Gas and Electric Company (BGE) submits this brief in opposition to the appeal of the National Whistleblower Center (NWC). NWC is appealing the Atomic Safety and Licensing Board's October 16, 1998 Memorandum and Order, which denied NWC's intervention petition and request for hearing based on NWC's failure to submit contentions by the specified deadline and NWC's failure to establish that two contentions filed after the deadline met the standards for late filing.¹ As discussed in this brief, the Licensing Board's decision was clearly correct and must be affirmed.

In essence, this case involves a petitioner who, despite having six months from the filing of BGE's license renewal application in which to formulate contentions, repeatedly ignored and flouted the deadlines established by the Licensing Board. Indeed, NWC has demonstrated at

¹ See Petitioner's Brief in Support of Appeal of Order Denying Intervention Petition and Dismissing Proceeding (Oct. 26, 1998) (hereinafter referred to as "NWC Brief").

every opportunity that it is much more interested in procedural squabbling and posturing than in identifying and adjudicating substantive issues. Even when NWC finally proffered two late contentions – nearly two weeks after the already extended deadline had expired – those contentions identified no specific substantive issue warranting the continuation of the adjudicatory proceeding; and NWC made no attempt to justify its lateness.

The issue presented by NWC's appeal, simply put, is whether the NRC has authority to manage its proceedings fairly and efficiently, or whether a petitioner is free to ignore deadlines and directives with impunity. NWC's vision of the proceeding is one where NWC has no accountability; where NWC can take a year simply to identify issues; and where NWC is free to aim unfounded accusations at the Licensing Board of "administrative anarchy"² and the NRC staff of *ex parte* communications and "hiding" documents.³ That is not how an adjudicatory proceeding should be conducted. NWC's conduct would not be tolerated in Federal court, and it is equally intolerable in NRC adjudications.

Accordingly, the Commission should affirm the Licensing Board's decision dismissing NWC. Any other result would seriously undermine the Atomic Safety and Licensing Board's authority to establish and enforce schedules, and signal complacency with the inordinately long and protracted hearings that have drawn so much criticism in the past.

STATEMENT OF CASE

BGE applied for renewal of the operating licenses for the Calvert Cliffs Nuclear Power Plant, Units 1 and 2, eight months ago, on April 8, 1998. A notice of receipt was promptly

² Petitioner's Motion to Vacate and Re-Schedule the Pre-Hearing Conference (Oct. 1, 1998) at 6.

³ NWC Brief at 6, 12, 14, 20; NWC Press Release (October 13, 1998) attached as Exh. A to this brief.

published in the Federal Register informing all interested persons that the application was available for inspection in the NRC Public Document Room. 63 Fed. Reg. 20,663 (1998). The application was also the subject of local press coverage. See, e.g., "Calvert Cliffs' Proximity Puts It On The Map," Wash. Post, Aug. 16, 1998, at M3.

As reflected by BGE's letter transmitting the application, BGE's Integrated Plant Assessment (IPA) Methodology, its Time Limited Aging Analyses Evaluation, and its reports on IPA results had already been submitted to the NRC. See Letter from C. Cruse to NRC, Application for License Renewal (April 8, 1998) at page 1. Most of BGE's system reviews were publicly available in 1997, and BGE's IPA methodology was available even earlier. See id. at 4.

Upon receipt of BGE's application, the NRC performed an acceptability and sufficiency review. On May 8, 1998, the NRC determined that BGE had submitted information that is complete and acceptable for docketing. 63 Fed. Reg. 27,601 (1998).

The NRC staff subsequently provided its schedule for review in a letter that was placed in the NRC's Public Document Room on July 8. Letter from C. Grimes to C. Cruse, "Proposed NRC Review Schedule for Baltimore Gas and Electric Company's Application for Renewal of Operating Licenses for Calvert Cliffs Nuclear Power Plant, Units 1 and 2" (June 17, 1998). The letter called for the NRC staff to submit technical requests for information (RAIs) by September 7 and environmental RAIs by October 7, and for BGE to respond to these RAIs by November 21 and December 6, respectively. Id.⁴

⁴ The NRC staff followed this schedule in issuing RAIs on the different sections of BGE's application, as well as on some topical areas. Copies of these letters were sent to persons who had requested to be placed on the NRC's correspondence list for Calvert Cliffs and to the Public Document Room. BGE and the NRC staff also held public meetings to discuss the review and RAIs. To help the NRC understand where information was located and how BGE's application had been put together, and to facilitate the NRC staff's review and development of RAIs, BGE

On July 8, 1998, the NRC published a notice of opportunity for hearing. 63 Fed. Reg. 36,966 (1998). The notice stated that interested persons could petition to intervene by August 7, and that "not later than" 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to its petition to intervene which must include a list of contentions to be litigated. The notice did not preclude the establishment of an earlier schedule for contentions to be filed. In fact, use of the phrase "not later than" clearly indicates that contentions could be submitted earlier.

On July 28, 1998, the Commission issued a Statement of Policy on Adjudicatory Proceedings, CLI-98-12, 44 N.R.C. ____ (1988) (also published at 63 Fed. Reg. 41,872). Therein, the Commission stated its expectation that Licensing Boards will establish schedules for promptly deciding issues before them. *Id.*, slip op. at 4; 63 Fed. Reg. at 41,873.

The Commission's regulations in 10 C.F.R. 2.718 provide licensing boards all powers necessary to regulate the course of proceedings, including the authority to set schedules. . . . Powers granted under section 2.718 are sufficient for licensing boards to control the supplementation of petitions for leave to intervene or requests for hearing, the filing of contentions. . . .

Many provisions in Part 2 establish schedules for various filings, which can be varied "as otherwise ordered by the presiding officer." Boards should exercise their authority under these options and 10 C.F.R. § 2.718 to shorten the filing and response times set forth in the regulations to the extent practical in a specific proceeding.

held three days of public meetings with the NRC staff – on June 24 through June 26. BGE met publicly again with the NRC staff on August 13 to discuss the fire protection report; on August 20 to discuss the status of the NRC's review, including specifically the progress on RAIs; and on September 28 again to discuss the status of the NRC's review, RAIs, and RAI responses. In addition, BGE held an earlier public meeting with the NRC staff on May 6 to discuss RAIs on the pre-submitted IPA reports on the feedwater and diesel fuel oil systems. All of these meetings were publicly noticed by sending a copy of a meeting notice to the Public Document Room and to all persons who had requested to be placed on the correspondence list for the plant, by posting the information in NRC's web page and an electronic bulletin board, and by announcements on a toll free telephone recording. NWC attended none of these meetings.

Id. (emphasis added).

On August 7, 1998, NWC submitted its Petition to Intervene and Request for Hearing in this proceeding. NWC is represented by attorneys from the law firm of Kohn, Kohn and Colapinto, who are experienced NRC practitioners, having previously participated in the multi-year hearing in the Vogtle license transfer proceeding. See, e.g., Georgia Power Co. (Vogtle Electric Generating Plant, Units 1 and 2), LBP-94-16, 39 N.R.C. 257, 261 (1994). NWC ignored the requirement to identify the aspects of the subject matter as to which it wished to intervene.

On August 19, the Commission issued an Order Referring Petition for Intervention and Request for Hearing to Atomic Safety and Licensing Board Panel, CLI-98-14, 44 N.R.C. ___ (1998). The Commission's Order directed the Licensing Board to set a schedule for any hearing that establishes as a goal the issuance of a Commission decision on the pending applications in about two and one half years from the date the application was received. To this end, the Commission recommended milestones for conclusion of significant steps in the adjudicatory proceeding, including a decision on intervention petitions and contentions within 90 days of the Order (i.e., by November 19.) The Commission also stated that it expected the Licensing Board to use the techniques specified in the Commission's July 28 Policy Statement.

An Atomic Safety and Licensing Board was promptly established to rule on the petitions to intervene and preside over the proceeding in the event that a hearing were ordered. 63 Fed. Reg. 45,268 (1998). The Licensing Board then issued an Initial Prehearing Order requiring BGE

and the NRC staff to respond to NWC's petitions by August 24 and August 27, respectively.⁵ Memorandum and Order (Initial Prehearing Order), dated August 20, 1998, at 2. The Licensing Board further directed NWC to file a supplement to its petition with a list of contentions and their bases by September 11, and BGE and the Staff to file responses by October 2. *Id.* at 3-4. The Licensing Board indicated it would conduct a prehearing conference during the week of October 13.

On August 21, NWC filed a petition to vacate the Commission's August 19 Order and challenged virtually every aspect of that Order, including the milestones and the Commission's authority to regulate the conduct of its proceedings. Petitioner's [sic] Motion to Vacate Order CLI-98-14 (Aug. 21, 1998). The same day, NWC filed with the Licensing Board a motion seeking postponement of the prehearing conference until after December 1 and a ruling that contentions could be filed up to fifteen days prior to the prehearing conference. Petitioner's Motion for Enlargement of Time (Aug. 21, 1998). NWC stated that it was still in the process of obtaining experts and argued that it needed time to ensure its experts could review "the voluminous and complex materials which form the basis for Applicant's request." *Id.* at 3.

On August 26, 1998, the Commission denied NWC's motion to vacate CLI-98-14. Memorandum and Order, CLI-98-15, 44 N.R.C. ___ (1998). The next day, the Licensing Board denied NWC's motion for enlargement of time. Memorandum and Order (Denying Time Extension Motion and Scheduling Prehearing Conference), dated Aug. 27, 1998. The Board

⁵ Baltimore Gas and Electric Company's Answer to Petition to Intervene and Request for Hearing of the National Whistleblower Center (Aug. 24, 1998); NRC Staff's Response to the National Whistleblower Center's Request for a Hearing and Petition to Intervene (Aug. 27, 1998). These answers asserted that NWC had not demonstrated standing and had failed to identify the aspects of the subject matter of the proceeding as to which NWC wished to intervene.

noted that BGE's application had been publicly available for more than four months, and that NWC had not shown why it was unable to compose its contentions by September 11. Id. at 2-3. The Board further noted that BGE's application has a much more limited scope than initial license applications, and NWC had not provided a single example of complex and novel issues warranting delay. Id. at 3. Finally, the Board found no basis for NWC's assertion that 10 C.F.R. § 2.714(a)(3) provides an absolute right to file contentions up to fifteen days before the initial prehearing conference.

As the staff points out, this provision sets an automatic outside limit for the filing of contentions, but only in the absence of licensing board action in accordance with its 10 C.F.R. §§ 2.711(a), 2.718 authority to regulate the proceeding by, among other things, setting schedules. In this instance, exercising that recognized authority, see Houston Lighting and Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-574, 11 NRC 7, 12-13 (1980), consistent with the Commission's scheduling guidance we have established a deadline for filing intervention petition supplements that is not tied to the prehearing conference schedule.

Id. at 3-4.

Two weeks later, on the date on which its contentions were due, NWC filed with the Commission a Petition for Review, asserting that the Licensing Board's denial of the motion for enlargement was unlawful for a number of reasons including the claim that the NRC rules give a petitioner up to 15 days prior to the prehearing conference to file contentions. Petition for Review (Sept. 11, 1998) at 6-7. NWC stated that it should therefore have until September 30 to make the required filings. Id. At the same time, NWC submitted to the Licensing Board a filing informing the Licensing Board that it disagreed with the Licensing Board's August 27 Memorandum and Order and that filing contentions would be "futile." Petitioner's Filing In

Response to the Board's Initial Prehearing Order (Sept. 11, 1998) at 4. In essence, NWC refused to comply with the deadline set by the Licensing Board.

On September 17, the Commission decided to grant an extension of time by which NWC might file contentions. Memorandum and Order, CLI-98-19, 44 N.R.C. __ (1998). The Commission concluded that at the time that NWC had requested a hearing in early August, NWC might not have anticipated that the Licensing Board would set a date as early as September 11 as the deadline for filing contentions. Id., slip op. at 2. The Commission therefore granted NWC until September 30 (the date mentioned in NWC's Petition for Review) to file contentions. Id. The Commission added that its decision in no way suggested any dissatisfaction with the Licensing Board's handling of the matter.

The Board acted entirely reasonably both in establishing the September 11 deadline and, in the absence of Commission guidance, in refusing to extend it, particularly in refusing to extend it until November, as NWC originally suggested. We urge the Board to continue its effort to move this proceeding forward expeditiously. Our decision today also reflects no agreement with NWC's position that the Commission's initial decision to expedite this case and to provide the Board scheduling milestones is somehow unlawful.

Id. at 3. The Commission also stated, "The Board should be prepared to terminate the adjudication promptly should NWC submit no admissible contentions." Id. at 2.

The next day, NWC filed a further motion seeking to delay its filing of contentions. Petitioner's Motion to Vacate Pre-Hearing Conference or In the Alternative for an Extension of Time (Sept. 18, 1998). NWC argued that no prehearing conference should be conducted until after NWC had had the opportunity to conduct "partial discovery" to assist in the formulation of contentions. Id. at 2. In the alternative, NWC requested a one-day extension of the September

30 deadline to accommodate its attorneys' observance of Yom Kippur. On September 21, the Licensing Board denied the request to vacate the prehearing conference, noting that NRC procedure does not allow discovery to assist a petitioner in framing contentions. Memorandum and Order (Scheduling Matters and Electronic Hearing Database), dated Sept. 21, 1998, at 2. With the consent of both BGE and the NRC staff, the Board granted NWC's request for a one day extension of the contention deadline until October 1. The Licensing Board also established November 2 as the new date by which BGE and the NRC staff would be required to respond to NWC's contentions, and indicated that the prehearing conference would be held during the week of November 9. Id. at 3. Shortly thereafter, the Licensing Board scheduled the prehearing conference for November 12. Order (Revised Prehearing Conference Schedule) dated Sept. 29, 1998.

On October 1 (the date when its contentions were again due), NWC once more ignored deadline set by the Licensing Board. Instead, flouting the Licensing Board's authority, NWC filed yet another motion to vacate the Prehearing Conference. Petitioner's Motion to Vacate and Reschedule the Pre-Hearing Conference (October 1, 1998). NWC repeated its previously rejected argument that it may file contentions up to fifteen days prior to the prehearing conference irrespective of the schedule and deadlines set by the Licensing Board. Id. at 6. NWC also claimed that on September 25 it had learned "for the first time" of an NRC staff letter asking BGE to respond to RAIs. Id. at 3. NWC asserted that it should not be required to submit its contentions until after BGE had responded to RAIs and suggested that it needed at least a hundred days to study RAI responses in order to formulate its contentions. See id. at 5. Since, as

previously discussed, BGE's last responses to RAIs are due on December 6, NWC in effect sought five more months of delay, until mid-March, to file its contentions.

On the same day, NWC filed a "status report" identifying a number of individuals who were allegedly reviewing BGE's application for NWC, as well as their areas of concern. Status Report (Oct. 1, 1998). NWC explicitly stated, however, that this filing did not represent contentions or a provide a basis for contentions. Id. at 2, 10.

Also on October 1, NWC submitted a Motion Requesting to be Informed of Communication Between the NRC Staff and Applicant. In addition, NWC filed a reply to the BGE and NRC staff arguments that it lacked standing and had ignored the requirements to identify the aspects of the proceeding as to which is sought to intervene. National Whistleblower Center's Reply to the NRC Staff and BGE's Answer to NWC's Petition to Intervene and Request for Hearing (Oct. 1, 1998). While NWC now characterizes the reply as including contentions (NWC Brief at 4), that characterization is patently false.⁶

A week later, NWC filed another pleading claiming that it had just learned of 18 additional RAIs between August 31 and September 9, as well as a notice of a public meeting. Petitioner's Notice of Filing (Oct. 7, 1998). NWC again asserted that it should not be required to submit its contentions until at least 100 days after BGE provides its responses to the RAIs.

⁶ Since the two late-filed contentions that NWC submitted on October 13 are identified as NWC's "Contention 1" and "Contention 2," it is remarkable that NWC now characterizes the assertions of interest in its October 1 reply as contentions. When one looks at the October 1 reply, it is obvious that it proposed no contentions. Nowhere in the reply is any argument or assertion labeled or characterized as a contention. This sort of mischaracterization by NWC is in fact indicative of NWC's conduct and demeanor in this proceeding.

BGE and the NRC Staff answered these filings on October 9,⁷ pursuant to two scheduling orders issued by the Licensing Board.⁸ Both BGE and the NRC staff pointed out that RAI responses are not a prerequisite for the filing of contentions, and as the Licensing Board had previously ruled, the Licensing Board had authority to establish the schedule for contentions filing.

Apparently recognizing that it was in danger of being dismissed for its repeated refusal to file contentions by the deadline, NWC at last submitted two proposed contentions on October 13 – two weeks after the already extended deadline had expired. Petitioner's Notice of Filing (Oct. 12, 1998). NWC made no attempt to address the factors for late filed contentions specified in the NRC's Rules of Practice at 10 C.F.R. § 2.714(a) and the Licensing Board's August 20 Initial Prehearing Order (at 3).

In a Memorandum and Order dated October 16, 1998, the Licensing Board held that by failing to address the criteria that govern late-filed contentions, NWC had not met its burden to establish the admissibility of its two contentions. Memorandum and Order (Denying Intervention Petition/Hearing Request and Dismissing Proceeding), dated October 16, 1998. The Licensing Board also reaffirmed its authority to establish a deadline for contentions not tied to the prehearing conference (id. at 15) and rejected the pendency of RAIs and RAI responses as

⁷ BGE's Answer to Petitioner's Motion to Vacate and Reschedule the Pre-Hearing Conference (Oct. 9, 1998); BGE's Answer to Petitioner's Motion Requesting to be Informed of Communication Between the NRC Staff and Applicant (Oct. 9, 1998); BGE's Answer to "Petitioner's Notice of Filing" (Oct. 9, 1998); NRC Staff's Response to Status Report and Petitioner's Motion to be Kept Informed of Communication between NRC Staff and Applicant (Oct. 9, 1998); NRC Staff's Answer in Opposition to Petitioner's Motion to Vacate and Reschedule the Pre-Hearing Conference Oct. 9, 1998).

⁸ Order (Schedule for Responses to Petitioner's Filings) dated Oct. 2, 1998; Order (Schedules for Responses to Petitioner's Notice of Filing) dated Oct. 8, 1998.

any justification for NWC's refusal to comply with the deadline. Id. at 18-19. Since a petitioner must propose at least one admissible contention to be admitted as a party,⁹ and NWC had not done so, the Licensing Board dismissed NWC's petition and terminated the adjudication. Id. at 20.

ARGUMENT

I. THE COMMISSION HAS BROAD AUTHORITY TO REGULATE THE CONDUCT OF ITS ADJUDICATORY PROCEEDINGS

The Commission has especially broad authority to regulate the proceedings before it.

See, e.g., Nuclear Information Resource Service v. NRC, 969 F.2d 1169, 1177 (D.C. Cir. 1992) (en banc) ("NIRS") (quoting Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, 435 U.S. 519, 543 (1978); Siegel v. AEC, 400 F.2d 778, 783 (D.C. Cir. 1968)); accord Duke Power Co. v. NRC, 770 F.2d 386, 390 (4th Cir. 1985). That authority includes the flexibility to fashion procedures to adapt to new developments, see NIRS, 969 F.2d at 1178-79, and the power to "adopt a pleading schedule designed to expedite its proceedings." Union of Concerned Scientists v. NRC, 920 F.2d 50, 55 (D.C. Cir. 1990).

The NRC has endowed its Atomic Safety and Licensing Boards with this broad authority. The Commission's Rules of Practice confer "all powers" necessary to conduct a fair and impartial hearing, to avoid delay, and to maintain order, including the authority to regulate the course of the hearing and the conduct of the participants. 10 C.F.R. § 2.718. The Atomic Safety and Licensing Board is specifically authorized to extend or reduce time limits. 10 C.F.R. § 2.711. In sum, a Licensing Board has considerable flexibility in regulating the course of a

⁹ 10 C.F.R. § 2.714(b)(1); Yankee Atomic Electric Co. (Yankee Nuclear Power Station), CLI-96-7, 43 N.R.C. 235, 248 (1996).

hearing and designating the order of procedure. Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), ALAB-819, 22 N.R.C. 681, 727 (1985); Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), ALAB-772, 19 N.R.C. 1193, 1245-46 (1984), rev'd on other grounds, CLI-85-2, 21 N.R.C. 282 (1985).

A. The Licensing Board's Schedule for the Filing of Contentions and the Prehearing Conference Was Lawful and Appropriate

Ignoring or trivializing the broad authority of the Licensing Board to regulate the conduct of proceedings, NWC's main argument appears to be that the Board could not set a deadline for the filing of contentions other than fifteen days prior to whatever date the Board chose for the prehearing conference. See NWC Brief at 6, 17-19. NWC describes this action as evidencing "bias, prejudice, and illegality on the part of the Board." Id. at 6-7.

NWC is wrong in its claims of illegality. The Licensing Board's establishment of the schedule was fully authorized by NRC regulations and consistent with long-standing NRC precedent. NWC is also wrong in its claims of prejudice. In fact, the Licensing Board's decision to schedule the prehearing conference more than 15 days after the deadline for contentions did not prejudice NWC one whit.

10 C.F.R. § 2.714(b)(1) states that "not later than" fifteen days prior to the first prehearing conference, a petitioner must submit a supplement to its petition providing a list of contentions. The words "not later than" can only mean that an earlier date is permissible.

In addition, 10 C.F.R. § 2.711 expressly gives licensing boards the power to alter time limits:

Except as otherwise provided by law, whenever an act is required or allowed to be done at or within a specified time, the time fixed or the period of time prescribed may for good cause be extended or shortened by the Commission or the presiding officer, or by stipulation approved by the Commission or the presiding officer.

10 C.F.R. § 2.711(a). In promulgating section 2.711, the Commission explained its intent to allow licensing boards to fairly expedite proceedings. 37 Fed. Reg. 15,127 (1972).

Many of the time limitations prescribed by the current rules were set to allow the maximum time for the parties to the proceedings to perform various activities. There are instances where the activities covered by the limitations can be performed in much less time. In appropriate cases where it would not prejudice a party, the presiding officer is authorized to reduce the time limits by order.

Id. at 15,129 (emphasis added). Thus, the NRC's rules authorized the Board to set a schedule for contentions and the first prehearing conference differing from that laid out in section 2.714(b).

Contrary to NWC's claims, scheduling the prehearing conference more than 15 days after the filing of contentions did not prejudice NWC at all, and therefore was completely consistent with section 2.711.¹⁰ In this regard, the October 1 deadline for NWC's contentions was not influenced by the scheduling of the prehearing conference. Rather, the deadline for contentions was selected first, based on NWC's position in its September 11 Petition for Review,¹¹ the Commission's consideration in CLI-98-19 of NWC's arguments for further time, and the additional day that was given to NWC to accommodate a religious holiday. Consequently, the October 1 deadline was both a reasonably generous date (already reflecting one extension and

¹⁰ NWC may argue that any reduction in time limits prejudices it, but such an argument would read section 2.711 out of the regulations.

¹¹ See NWC's Petition for Review (Sept. 11, 1998) at 6-7, stating, "Petitioners should have had, under the current schedule before the Board, until September 30 to make the required filings. . ."

nearly a six-month period after the filing of application during which NWC could formulate contentions) and one that was perfectly permissible under the NRC's Rules of Practice.¹² The Licensing Board's subsequent decision to move the date for the prehearing conference back to November 12 in no manner shortened the time that had been allotted to NWC. The only effect of the Licensing Board's decision was to give the other parties an opportunity to respond to any contentions and to give both the Licensing Board and NWC an opportunity to study the answers before oral argument at a prehearing conference.¹³ Accordingly, the Board's schedule was not prejudicial to NWC, but rather was a benefit to all.

In addition to the express authority in section 2.711 to alter time limits, 10 C.F.R. § 2.718 gives the Board the broad power to regulate proceedings generally:

A presiding officer has the duty to conduct a fair and impartial hearing according to law, to take appropriate action to avoid delay, and to maintain order. He has all powers necessary to those ends

10 C.F.R. § 2.718 (emphasis added). This section gives the licensing board "extensive discretionary authority over the management of licensing proceedings." Offshore Power Systems (Floating Nuclear Power Plants), ALAB-489, 8 N.R.C. 194, 204 (1978), cited with approval in Texas Utilities Generating Co. (Comanche Peak Steam Electric Station, Units 1 and 2), CLI-81-36 14 N.R.C. 1111, 1113 (1981). This authority has always included, as the

¹² Even under NWC's interpretation of the regulations, the Licensing Board was free to set October 1 as the deadline for contentions simply by scheduling the prehearing conference for October 16 (15 days later).

¹³ The default schedule in section 2.714(b) results in a prehearing conference on the same day that the NRC staff's answer to contentions is due, assuming no added time for service. See 10 C.F.R. § 2.714(c). If contentions are served by mail, the default schedule results in the applicant's answer being due on the day of the prehearing conference, and the staff's answer being due five days after the conference. Id. For this reason, Licensing Boards frequently increase the period between the filing of contentions and the first prehearing conference, so that the Board and the petitioners have the opportunity to review the answers before the conference.

Commission stated in CLI-98-12, supra, the power to establish scheduling orders. See, e.g., Public Service Co. of Indiana (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-459, 7 N.R.C. 179, 188 (1978); Northeast Nuclear Energy Co. (Millstone Nuclear Power Station, Unit 2), LBP-92-17, 36 N.R.C. 23, 29 (1992).

NWC incorrectly argues that 10 C.F.R. § 2.3 precludes the Board from establishing a contentions deadlines other than 15 days prior to the prehearing conference. NWC Brief at 18. Section 2.3 states:

In any conflict between a general rule in subpart G of this part and a special rule in another subpart or other part of this chapter applicable to a particular type of proceeding, the special rule governs.

10 C.F.R. § 2.3 (emphasis added). Since sections 2.714, 2.711, and 2.718 are all in 10 C.F.R. Part 2, Subpart G, section 2.3 is inapplicable.

NWC's argument that the phrase "except as otherwise provided by law" in section 2.711 precludes use of that section to alter the specific time limits in section 2.714 (NWC Brief at 18) is also wrong. Such a reading would render section 2.711(a) meaningless, because under NWC's interpretation, section 2.711(a) could never be used to alter a specific time limit in another rule. Despite the fact that section 2.711(a) expressly gives Licensing Boards authority to alter "a time fixed or the period of time prescribed," the specific time period prescribed by another rule would always "trump" section 2.711(a) under NWC's reading. Clearly, that is not what the phrase "except as otherwise provided by law" means. Rather, the sensible interpretation is that a Licensing Board may extend any date unless such statute or regulation expressly prohibits an extension.

Finally, licensing boards have long used their power under section 2.711 (and section 2.718) to change the date by which petitioners must file contentions¹⁴ and this practice has been explicitly approved by Atomic Safety and Licensing Appeal Boards. See Houston Lighting and Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-574, 11 N.R.C. 7, 12-13 (1980); Houston Lighting and Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-565, 10 N.R.C. 521, 523 (1979).¹⁵ In sum, the Licensing Board's schedule not only fully authorized by the NRC's rules but also consistent with longstanding NRC practice.

B. NWC Has No Right to Review Requests for Additional Information or Responses Prior to Submitting Contentions

NWC also challenges the Licensing Board's schedule on the grounds that it has a right to incorporate the responses to the RAIs into its contentions. NWC Brief at 22. NWC further argues that the NRC Staff's RAIs indicate BGE's application is incomplete and that "it is nothing short of patently unreasonable to expect NWC to file contentions based on an application so incomplete." Id. at 21-22. Every aspect of these arguments is incorrect and unsupported.

¹⁴ See, e.g., Northern States Power Co. (Independent Spent Fuel Storage Installation), LBP-96-22, 44 N.R.C. 138, 141 (1996); Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), LBP-92-27, 36 N.R.C. 196, 198 (1992); Millstone, LBP-92-17, supra, 36 N.R.C. at 29; Florida Power and Light Co. (Turkey Point Nuclear Generating Plant, Units 3 and 4), LBP-85-36, 22 N.R.C. 590, 593 (1985); General Electric Co. (GETR Vallecitos), LBP-83-19, 17 N.R.C. 573, 578 (1983); Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Units 1 & 2), App. to LBP-81-24, 14 N.R.C. 235, 238 (1981).

¹⁵ Although NWC's brief cites no case law supporting its position, NWC has previously cited Georgia Power Co. (Vogtle Electric Generating Plant, Units 1 and 2), LBP-90-29, 32 N.R.C. 89, 93 (1990) for the proposition that it has an unlimited right to "amend" its petition up to fifteen days prior to the prehearing conference. See, e.g., Petition to Intervene and Request for Hearing of the National Whistleblower Center (Aug. 7, 1998) at 4. This licensing board case is inapposite. It deals with an "amendment" to a petition under section 2.714(a) to perfect claims of standing, and has nothing to do with a petitioner's obligation to file a "supplement" with a list of contentions under section 2.714(b)(1). Section 2.714(a) governs the contents of the initial petition (i.e., the demonstration of standing and identification of the aspects of the intervention), and section 2.714(a)(3) provides for the amendment of these items. The filing of contentions, on the other hand, is governed by section 2.714(b) and is accomplished by filing a "supplement" to the petition, not by an amendment under section 2.714(a). The Georgia Power case also involved no alternative schedules established by the Licensing Board.

At the outset, NWC's assertion that BGE's application is incomplete is inconsistent with the NRC's acceptance and docketing review. As stated in the NRC staff's acceptance letter:

The Commission's staff has determined that BG&E has submitted information in accordance with 10 CFR 54.19, 54.21, 54.22, 54.23, and 51.53(c) that is complete and acceptable for docketing. . . . The docketing of the renewal application does not preclude requesting additional information as the review proceeds. . . .

See 63 Fed. Reg. 27,601 (1998).

Moreover, NWC's argument that it should not have been required to submit contentions until BGE responds to RAIs is wrong as a matter of law. As a legal matter, the NRC's Rules of Practice do not give a petitioner the right to await the NRC staff's questions or an applicant's responses prior to formulating contentions. To the contrary, in promulgating section 2.714 governing the pleading of contentions, the NRC specifically stated:

"[A]n intervention petitioner has an ironclad obligation to examine the publicly available documentary material pertaining to the facility in question with sufficient care to enable the petitioner to uncover any information that could serve as the foundation for a specific contention. . . .

* * *

We reject the arguments that the new rule is unfair and a denial of due process because it requires intervenors to allege facts in support of its contention before the intervenor is entitled to discovery. Several months before contentions are filed, the applicant will have filed an application with the Commission, accompanied by multi-volume safety and environmental reports. These documents are available for public inspection and copying in the Commission's headquarters and local public document rooms.

* * *

The Commission believes it to be a reasonable requirement that before a person or organization is admitted to the proceeding it read the portions of the application (including the applicant's safety and environmental reports) that address the issues that are of concern to it and demonstrate that a dispute exists between it and

the applicant on a material issue of fact or law. Many intervenors in NRC proceedings already do what is intended by this requirement: they review the application before submitting contentions, explain the basis for the contention by citing pertinent portions and explaining why they have a disagreement with it.

The Commission also disagrees with the comments that § 2.714(b)(2)(iii) should permit the petitioner to show that it has a dispute with the Commission staff or that petitioners not be required to set forth facts in support of contentions until the petitioner has access to NRC reports and documents. . . . [B]ecause the license application should include sufficient information to form a basis for contentions, we reject commenters' suggestions that intervenors not be required to set forth pertinent facts until the staff has published its FES and SER.

54 Fed. Reg. 33,168, 33,170-171 (1989).

Consistent with these statements, the Commission has held that, because the focus of a hearing is on whether the application satisfies the NRC's regulatory requirements and because the application should include sufficient information to form a basis for contentions, a petitioner is not permitted to defer the filing of contentions until the NRC Staff has issued its environmental and safety review documents. Sacramento Municipal Utility District (Rancho Seco Nuclear Generating Station), CLI-93-3, 37 N.R.C. 135, 153-54 (1993); see also Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), CLI-83-19, 17 N.R.C. 1041, 1045 (1983). These statements and precedents make it abundantly clear that a petitioner should base its contentions on the application and is not entitled to await the existence of NRC reports, documents, or discovery. There is no reason why RAIs or RAI responses should be treated any differently.

C. There Is No NRC Requirement to Serve a Petitioner Copies of Correspondence between the Applicant and the NRC Staff

NWC's argues that the Board erred in failing to "punish" BGE and the NRC staff for not placing RAIs on the record or providing them to NWC. NWC Brief at 21. The short answer to this argument is that NWC never made any attempt to ask for this correspondence, and no NRC regulation or policy requires its automatic provision to a petitioner or placement on the record.

As far as BGE is aware, NWC made no attempt whatsoever to have itself added to the distribution lists for correspondence related to the Calvert Cliffs license renewal. Nor does NWC claim that it did. Certainly, NWC made no attempt to request correspondence from BGE. The only requests that NWC made of BGE were: (1) a request for an electronic copy of BGE's application, which BGE provided by hand delivery within an hour, and (2) a question whether BGE had responded to an August 28 RAI, which BGE also answered within an hour. See BGE's Answer to Petitioner's Motion to Vacate and Reschedule the Filing Hearing Conference (Oct. 9, 1998) at 6.

In this regard, it should be noted that NWC's attorneys are no newcomers to NRC proceedings, but rather are experienced NRC practitioners who participated in the multi-year Southern Nuclear Operating Company license transfer proceeding. NWC's own web page includes a link to the NRC's electronic listing of all NRC public meetings (see exhibit B hereto). Thus, despite NWC's complaints that the NRC staff failed to inform it of public meetings,¹⁶ NWC in fact knew exactly how to find out about meetings and advertised that knowledge to others.

¹⁶ See Petitioner's Notice of Filing (Oct. 7, 1998) at 5; NWC Press Release, Exh. A, at 2.

NWC's suggestion that it was unaware of RAIs¹⁷ appears equally incredible. A set of RAIs dated August 11 had been in the public document room since the end of August, over a month before the deadline for NWC's contentions, yet NWC made no request to be provided copies of any subsequent RAIs. Similarly, the NRC Staff's June 17 letter providing its schedule for issuing RAIs had been placed in the public document room on July 8, yet NWC made no request to be provided copies. And while every one of the meetings between BGE and the NRC staff to discuss the staff's review of the application was publicly noticed on the electronic listing linked to NWC's own web page, and RAIs were discussed at those meetings, NWC did not attend a single one. In sum, it appears that NWC has been unwilling to make even a modicum of effort to keep itself informed, and instead has been far more interested in manufacturing a press release complaining of a "secret licensing proceeding." See Exhibit A.

As a legal matter apart from NWC's lack of diligence, the NRC's rules do not require a petitioner to be served with correspondence between the applicant and the NRC staff. Even as to an intervenor who has been admitted to fully participate in an NRC proceeding, there is no such right.

Pursuant to 10 C.F.R. § 2.701(b), [intervenors are] entitled to service of all adjudicatory filings made by [the Licensee] or the Staff. However, this provision does not require service of documents exchanged between the Licensee and Staff in the review process. To the extent that Staff and Licensee have been required in other proceedings to serve intervenors with information that was not offered for filing, this requirement did not come from a particular regulation but was based on the circumstances in each case.

Rancho Seco, supra, CLI-93-3, 37 N.R.C. at 152-153 (footnotes omitted).

¹⁷ NWC claimed that it first learned that the NRC staff had requested information on September 25. Petitioner's Motion to Vacate and Reschedule the Pre-hearing Conference (Oct. 1, 1998) at 3.

Information exchanged between the Staff and a licensee is not considered offered for filing in an adjudication and, thus, is not subject to the provisions of 10 C.F.R. § 2.701. . . . The petitioners have access to such information that is placed in the public document room.

Id. at 152 n.46.¹⁸

It is true that Licensing Boards have occasionally required that an intervenor be included on correspondence lists, but they have done so after the intervenor was admitted as a party (i.e., after ruling on contentions) and in response to a specific request or discussion with the parties.¹⁹ Here, NWC was not yet a party and made no such request.

D. There Was No Justification for NWC's Refusal to Comply with the October 1 Contentions Deadline

As discussed above, the October 1 deadline was both lawful and appropriate, and NWC was therefore obligated to comply with it. NWC simply disregarded the deadline, submitting instead legal arguments (most of which had previously been considered and rejected in this proceeding) that the deadline was inappropriate. This conduct was unacceptable.

¹⁸ Parties are required to inform the Board of new information that is relevant and material to matters being adjudicated. Duke Power Co. (William B. McGuire Nuclear Station, Units 1 and 2), ALAB-143, 6 A.E.C. 623, 625 (1973) (requiring disclosure of organizational changes affecting the accuracy of evidence on which the licensing board was passing). The purpose of this requirement is to protect reasoned decision making, so that a licensing board does not issue a decision based on evidence that inaccurately reflects existing facts. Id. at 625-26. In the current proceeding, because there are no contentions, there are not yet any "matters being adjudicated" or any basis to determine materiality. As a practical matter, the McGuire doctrine has served to require communication of significant new information (such as application amendments) that might affect the outcome of a proceeding. It has not been interpreted as requiring notification or service of routine RAIs and RAI responses. Cf. Tennessee Valley Authority (Brown's Ferry Nuclear Plant, Units 1, 2 and 3), ALAB-677, 15 N.R.C. 1387, 1389-93 (1982) (chronicling RAIs and an amendment to the application but only holding that the Board and parties should have been notified of the amendment).

¹⁹ See, e.g., Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), LBP-82-16, 15 N.R.C. 566, 590-91 (1982); Carolina Power & Light Co. (Shearon Harris Nuclear Power Plant, Units 1 and 2), LBP-82-119A, 16 N.R.C. 2069, 2112-13 (1982). Accord Rancho Co., CLI-93-3, 37 N.R.C. at 153.

NWC now attempts to divert attention from its noncompliance with the appropriately and lawfully established deadline by suggesting that the Licensing Board erred in applying an "unavoidable and extreme circumstances" standard to NWC's extension requests. NWC Brief at 19. NWC's argument is a smokescreen, because the Licensing Board did not rely on this standard in dismissing NWC's petition.

In its October 16 Memorandum and Order dismissing NWC's petition, the Licensing Board observed that NWC had not explicitly requested an extension of time,²⁰ but was instead offering arguments – (1) its purported right under section 2.714(b)(1) to file contentions 15 days prior to the prehearing conference, and (2) the existence of RAIs – as grounds excusing its failure to comply with deadlines. Memorandum and Order (Denying Intervention Petition/Hearing Request and Dismissing Proceeding), dated October 16, 1998, at 14-15. The Licensing Board then once again addressed and reaffirmed its authority to establish the October 1 deadline. Having done so, the Licensing Board stated that "[w]ith this conclusion and petitioner NWC's failure to make any attempt to obtain a timely extension of the October 1 deadline or to address the governing standard of 'unavoidable and extreme circumstances,' we would be justified in dismissing the case without further discussion." *Id.* at 16-17. Nevertheless, the Licensing Board proceeded to address NWC's arguments concerning the existence of RAIs and ruled that "the staff's postacceptance requests for additional information and meetings with BG&E to discuss

²⁰ An earlier Licensing Board order dated August 27 applied the "unavoidable and extreme circumstances" standard in rejecting NWC's initial request for an extension of time, but since the Commission's September 17 Memorandum and Order subsequently reversed this Licensing Board decision and gave NWC several more weeks in which to formulate contentions, the August 27 order is irrelevant. The only other decision that addressed an explicit extension request was the Licensing Board's September 21, 1998 Memorandum and Order, but it did not rely on (or even mention) the "unavoidable and extreme circumstances" standard. There, the Licensing Board denied NWC's request to delay the prehearing conference until after NWC had had the opportunity for discovery. It did so on the purely legal grounds that NRC precedent precludes an intervenor from obtaining discovery to assist in framing contentions.

the status of its application are not matters that give any cause for delaying the filing of NWC contentions.” *Id.* at 18 (emphasis added).

In sum, the Licensing Board determined (1) that it had authority to schedule the prehearing conference more than 15 days after the deadline for contentions, and (2) that the RAIs did not provide “any” cause for NWC’s noncompliance with the deadline. The Licensing Board’s dismissal of NWC did not rely on the “unavoidable and extreme circumstances” standard. Therefore, this standard was simply irrelevant.

II. NWC WAS PROPERLY DISMISSED BECAUSE IT FAILED TO SUBMIT ADMISSIBLE CONTENTIONS

A. NWC’s Failure to Address the Late-Filing Criteria Warrants Its Dismissal

When it finally submitted its two contentions, twelve days after the already-extended deadline, NWC made no attempt to address the five factors that govern whether a late-filed contention may be admitted. Absent a balancing of these factors, the NRC’s Rules of Practice state that a late filing “will not be entertained.” 10 C.F.R. § 2.714(a). Hence, the Board correctly rejected NWC’s contentions.

NWC now incorrectly argues that the Board should have balanced the late-filing criteria on its own. NWC Brief at 23. Where a late-filing petitioner fails to address the lateness factors, the Board may properly dismiss the petition without further consideration. Boston Edison Co. (Pilgrim Nuclear Power Station), ALAB-816, 22 N.R.C. 461, 465-66 (1985) (“[G]iven its failure even to address the section 2.714(a) lateness factors, [a] [late] intervention petition [is] correctly denied because it [is] untimely.”) “Late petitioners properly have a substantial burden in justifying their tardiness.” Nuclear Fuel Services, Inc. (West Valley Reprocessing Plant), CLI-

75-4, 1 N.R.C. 273, 275 (1975). “[T]he late petitioner must address each of [the] five factors and affirmatively demonstrate that, on balance, they favor permitting his tardy admission to the proceeding.” Duke Power Co. (Perkins Nuclear Station, Units 1, 2 and 3), ALAB-615, 12 N.R.C. 350, 352 (1980).

[T]he burden of persuasion on the lateness factors is on the tardy petitioner and . . . , in order to discharge that burden, the petitioner must come to grips with those factors in the petition itself. The underlying reason for this requirement is particularly apparent in the context of the first factor. A licensing board hardly could determine whether there was justification for the untimely filing without knowing why the petition was not submitted by the prescribed deadline—information peculiarly within the possession of the petitioner. Likewise, in most instances at least, the board will not be able to assess confidently the third factor (the extent to which the petitioner’s participation may reasonably be expected to assist in developing a sound record) without having before it the petitioner’s reasons for believing that the factor weighs in his or her favor.

Pilgrim, ALAB-816, 22 N.R.C. at 466 (footnotes omitted). Therefore, because NWC utterly failed to discharge its burden, the Board was proper in rejecting the contentions and had no obligation to balance the criteria that NWC had ignored.

In any event, NWC’s contentions would not have satisfied the late-filed criteria. 10 C.F.R. § 2.714(a)(1)(i-v). The first factor, good cause, weighs heavily against NWC, in that BGE’s application was publicly available months before the contention filing deadline. See Texas Utilities Electric Co. (Comanche Peak Steam Electric Station, Unit 2), CLI-93-4, 37 N.R.C. 156, 165 (1993). Good cause is the most important factor, and where it is lacking, a petitioner must make a compelling showing on the others. State of New Jersey (Department of Law and Public Safety’s Requests Dated October 8, 1993), CLI-93-25, 38 N.R.C. 289, 296 (1993). The second and fourth factors, concerning the ability of petitioner to protect its interests

militate against acceptance of the late filing since NWC has not shown that it has any valid interest (*i.e.*, standing), and the NRC staff will of course consider the RAIs as it completes its review.²¹ See Comanche Peak, CLI-93-4, 37 N.R.C. at 165. The third factor, contribution to the record, weighs against NWC, in that it did not precisely identify the issues it planned to cover, nor did it summarize any proposed witness testimony on those issues. Id. at 166. This is particularly important where there would otherwise be no hearing. Id. The last factor, the potential for delay, weighs heavily against NWC, since admitting it would require a hearing where none would otherwise be held. Id. at 167; see State of New Jersey, CLI-93-25, 38 N.R.C. at 296. Therefore, even if NWC had addressed the lateness factors, its petition would have been denied.

B. NWC's Contentions Failed to Meet the Basis and Specificity Requirements

The Commission should sustain the Licensing Board's dismissal of NWC's contentions not only because NWC failed to address the criteria for late filing, but also because NWC's contentions clearly failed to satisfy minimum pleading requirements. The contentions were both vague and unsupported.

NWC's first contention alleged that BGE's application is incomplete and must be withdrawn or dismissed, and referred generally (*i.e.*, without identifying any particular request or deficiency) to the NRC staff's RAIs as the purported basis for this contention. The second contention alleged that BGE's application "fails to meet aging and other safety-related requirements mandated by law and/or regulations," and again referred without any specificity to the RAIs as the contention's purported basis. Petitioner's Notice of Filing (Oct. 12, 1998).

²¹ See infra, Section III.A regarding standing.

These contentions were impermissibly vague, because they do not identify any specific deficiency in the application or any noncompliance with NRC requirements. "Neither Section 189a of the Atomic Energy Act nor § 2.714 . . . permits the filing of a vague, unparticularized contention. . . ." 54 Fed. Reg. 33,168, 33,171 (1989) (statement of considerations for section 2.714, quoting Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), ALAB-687, 16 N.R.C. 460, 468 (1982), vacated in part on other grounds, CLI-83-19, 17 N.R.C. 1041 (1983)). Rather, for a contention to be admissible, a petitioner must refer to a specific portion of the application being challenged and state the issue of fact or law associated with that portion. Yankee Atomic, CLI-96-7, 43 N.R.C. at 248.

In addition, NWC failed to satisfy the "basis" requirements. For a contention to be admissible, a petitioner must provide a "basis" of alleged facts or expert opinions, together with references to the specific sources and documents that establish those facts and expert opinions, in a manner sufficient to show that a genuine dispute exists on a material issue. Id. at 248-49. Merely referencing a list of NRC staff letters does not provide an adequate basis for a contention. Sacramento Municipal Utility District (Rancho Seco Nuclear Generating Station), LBP-92-23, 36 N.R.C. 120, 136 (1992); Louisiana Energy Services, L.P. (Claiborne Enrichment Center), LBP-91-41, 34 N.R.C. 332, 346 and 357-58 (1991) (contentions rejected as not identifying any specific deficiency in the application, where petitioner merely incorporates by reference and without explanation a Staff letter to the applicant which contains questions related to the Staff's review); see Tennessee Valley Authority (Browns Ferry Nuclear Plant, Units 1 and 2), LBP-76-10, 3 N.R.C. 209, 216 (1976) (non-selective incorporation by reference violates the specificity

requirement of section 2.714); Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), CLI-89-3, 29 N.R.C. 234, 240-41 (1989).

C. NWC Had No Right to a Prehearing Conference Without Timely and Properly Supported Contentions

NWC asserts that it "should remain a party until it can argue that its contentions meet the [late-filed] standard at the prehearing conference" and that its dismissal "flies in the face of agency precedent." NWC Brief at 20 (citing Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation), LBP-98-7, 47 N.R.C. 142 (1998)). In the alternative, NWC asserts that the Board should have "file[d] an additional briefing schedule" to allow it to address the section 2.714(a)(1) lateness factors. NWC Brief at 24.

NWC is wrong on both points. A late-filing petitioner must address the section 2.714(a)(1) lateness factors in its petition. Pilgrim, ALAB-816, supra, 22 N.R.C. at 466. "[The petitioner] possess[e]s no right to respond to the [licensee] and staff answers to [its] petition -- i.e., a second opportunity to make the 'substantial showing' on the five lateness factors that should have been included in its petition itself." Id. at 468 (emphasis is original); accord Commonwealth Edison Co. (Braidwood Nuclear Power Station, Units 1 and 2), CLI-86-8, 23 N.R.C. 241, 253 (1986) (Roberts, Comm'r, concurring); Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), LBP-89-3, 29 N.R.C. 51, 59 (1989); see North Atlantic Energy Service Corporation (Seabrook Station Unit No. 1), LBP-98-23, 48 N.R.C. ___, slip op. at 5-6 (1998) (summarily dismissing petitioner for failing to justify its lateness).²² "[A petitioner's]

²² Any right a petitioner has to respond to arguments concerning the substantive admissibility of its contentions does not extend to the question of whether their lateness was justified. Pilgrim, ALAB-816, 22 N.R.C. at 466-67 n.22.

obligation is to establish affirmatively at the threshold (i.e., in the late petition itself) that a balancing of the five lateness factors warrants overlooking the tardiness." Pilgrim, ALAB-816, 22 NRC at 467 n.22. Therefore, the Board was correct in rejecting NWC's late-filed contentions.

NWC's assertion that the Private Fuel Storage case holds to the contrary is also incorrect. There, the board summarily dismissed a petitioner's late-filed contentions for failure to address the late-filing factors:

As [the applicant] points out, the [petitioner] has not addressed the late-filing factors in seeking to add these to the list of contentions it is sponsoring. Because we agree with the applicant, we deny the [petitioner's] late-filed contentions request.

Private Fuel Storage, LBP-98-7, 47 N.R.C. at 182.

III. NWC'S DISMISSAL SHOULD ALSO BE SUSTAINED FOR NWC'S FAILURE TO ESTABLISH ITS STANDING OR IDENTIFY ASPECTS

In addition to affirming the Licensing Board's October 16 Memorandum and Order on the bases stated therein (i.e., for NWC's failure to submit admissible contentions), the Commission should also sustain NWC dismissal on the alternative grounds that NWC lacks standing and failed to identify the aspects of the subject matter of this proceeding as to which it wished to intervene. An appellate tribunal is permitted to sustain a decision on any ground advanced in the proceeding below. E.g., Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), ALAB-832, 23 N.R.C. 135, 141 (1986).

A. NWC Lacks Standing

NWC's lack of standing was raised before the Licensing Board by both BGE and the NRC staff as grounds for NWC's dismissal. See Baltimore Gas and Electric Company's Answer

to Petition to Intervene and Request for Hearing of the National Whistleblower Center (Aug. 24, 1998); NRC Staff's Response to the National Whistleblower Center's Request for a Hearing and Petition to Intervene (Aug. 27, 1998). While NWC provided a reply to these standing arguments,²³ it failed to cure the defects in its claims.

In order to demonstrate standing, an organization must show that an action will cause injury-in-fact to either its own organizational interests or to the interests of its members. Yankee Atomic Electric Co. (Yankee Nuclear Power Station), CLI-94-3, 39 N.R.C. 95, 102 n.10 (1994). Where an organization asserts a right to represent the interests of its members, the "judicial concepts of standing" require a showing that:

(1) its members would otherwise have standing to sue in their own right; (2) the interests that the organization seeks to protect are germane to its purpose; and (3) neither the claim asserted nor the relief requested requires an individual member to participate in the organization's lawsuit.

Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation), CLI-98-13, 48 N.R.C. ___, slip op. at 4 (1998), citing Hunt v. Washington State Apple Adver. Comm'n., 432 U.S. 333, 343 (1977).

With respect to the second prong of the test for "representational standing" above, the Commission has adopted a "modest but sensible" test for "organizational germaneness." Private Fuel Storage, CLI-98-13, supra, slip op. at 7, citing Humane Soc'y of the United States v. Hodel, 840 F.2d 45, 58-59 (D.C. Cir. 1988). The organizational germaneness test requires that "an organization's litigation goals be pertinent to its special expertise and the grounds that bring its membership together." Private Fuel Storage, CLI-98-13, slip op. at 7. The purpose of this test is

²³ The National Whistleblower Center's Reply to the NRC Staff and BGE's Answer to NWC's Petition to Intervene and Request for Hearing (Oct. 1, 1998).

to ensure "a modicum of concrete adverseness by reconciling membership concerns and litigation topics by preventing associations from merely being law firms with standing." Id.

NWC failed to satisfy the second prong of the test for representational standing, because license renewal is not germane to NWC's purpose or the "grounds that bring its membership together." NWC's organizational purpose is as follows:

The purposes and objects for which the corporation [NWC] is formed include the promotion of democratic government and advancing the rights of those who make disclosures regarding corporate or governmental misconduct, environmental protection or health and safety violations. The corporation is dedicated to alerting employees, organizations and the general public about the existence of legal protections of employee whistleblowers from the private and public sectors. The corporation will carry out the objects and purposes of the corporation through research, investigation and education.

NWC Articles of Incorporation (fourth article), attached to BGE's Answer to Petition to Intervene and Request for Hearing of NWC (Aug. 24, 1998). In short, NWC's "purposes and objects" are to protect "whistleblowers" and to inform people about the legal protections afforded whistleblowers. This may be a legitimate purpose, but it is not germane to this proceeding on license renewal.²⁴ Furthermore, NWC failed to indicate any "pertinent special expertise" it has relative to implementation of 10 C.F.R. Part 54, age-related equipment degradation, or the associated environmental review. See Private Fuel Storage, CLI-98-13, slip op. at 7.

NWC has argued that the protection of whistleblowers falls with the core safety-related mission of the NRC. NWC's Reply, note 23 supra, at 4. That the Commission's purpose of

²⁴ See Medical Ass'n of Alabama v. Schweiker, 554 F. Supp. 955, 965 (M.D. Ala.), aff'd, 714 F.2d 107 (11th Cir. 1983) (a medical association was not the proper organization to represent its physician members as taxpayers because they had joined the association as physicians and not as taxpayers). Humane Society (referred to by the Commission in Private Fuel Storage, CLI-98-13, supra, slip. op. at 7, as the "leading judicial case on this issue") cites this decision with approval. Humane Society, 840 F.2d at 59.

protecting the public health and safety envelopes NWC's purpose of protecting whistleblowers misses the point. It does not make license renewal germane to NWC's organizational purpose.

NWC also failed to identify any "member" that it could represent. NWC's Petition based its claims of standing solely on representation of two individuals. Neither is a "member" of NWC.²⁵ Indeed, NWC's Articles of Incorporation clearly states that "[t]he corporation [NWC] shall not have members." See NWC's Articles of Incorporation (fifth article), attached to BGE's Answer to Petition to Intervene and Request for Hearing of NWC (Aug. 24, 1998)

The representational standing doctrine is a "very limited exception to the fundamental . . . requirement that [a petitioner] 'be himself among the injured.'" Health Research Group v. Kennedy, 82 F.R.D. 21, 25 (D. D.C. 1979) (emphasis added) citing Sierra Club v. Morton, 405 U.S. 727, 734-35 (1972). Where an organization has no members, it must demonstrate a "very substantial nexus between the organization and the parties it purports to represent . . . where those parties are not actually members." Id. at 26. The court in Health Research Group held that a "very substantial nexus" sufficient for representational standing could be demonstrated where the individuals "regularly elect [the] governing body" of the non-member organization purporting to represent them. Id. at 27.²⁶ NWC did not provide such a demonstration.

NWC has cited Action on Smoking & Health v. Dep't of Labor, 100 F.3d 991 (D.C. Cir. 1996) as supporting its ability to act in a representative capacity for members of its board of directors and officer. NWC's Reply, note 23 supra, at 2. In that case, the Court indicated that a

²⁵ The affidavits attached to NWC's petition to intervene state that (1) Rev. L. William Yolton is an officer and director of NWC; and (2) Ms. M. Joyce Claro is an officer and employee of NWC. Neither individual claims to be a member of NWC.

²⁶ For a fuller discussion, see Baltimore Gas and Electric Company's Answer to Petition to Intervene and Request for Hearing with the National Whistleblower Center (Aug. 24, 1998) at 4-7.

charitable trust could act in a representative capacity for members of its Board of Trustees, and treat their interests as its own for purposes of standing, when those interests are germane to the organization's purpose. 100 F.3d at 991-92. NWC is not a charitable trust, and neither of the individuals whom NWC purports to represent is a member of a Board of Trustees. More significantly, since the interests that NWC seeks to represent in this license renewal proceeding are not germane to NWC's organizational interest, there is no basis for NWC to represent a member of the Board of Directors even under this limited precedent.

In its October 1 Reply, NWC also claimed for the first time that its own interests were affected, on the ground that it "owns" property in northwest Washington. NWC's Reply, note 23 supra, at 6. NWC admits, however, that its title to this property is defective and has not been registered. Id., n.1. Further, while NWC states that most of the District of Columbia is within the 50-mile emergency planning zone for Calvert Cliffs, NWC does not demonstrate that the property in question is within 50 miles of the plant. Even if it were, it is unclear whether such a distance would be sufficient to establish standing in a license renewal proceeding. Yankee Atomic, CLI-96-7, 43 N.R.C. at 247 (under NRC jurisprudence, proximity alone does not establish standing, outside the nuclear power reactor construction permit or operating license context, absent an obvious potential for offsite consequences).

B. NWC has Failed to Identify Specific Aspects of the Subject Matter on Which it Wished to Intervene

NWC has also persistently ignored the Commission's pleading requirement to "identify the specific aspect(s) of the proceeding as to which petitioner wishes to intervene." 63 Fed. Reg. 36,966; see 10 C.F.R. § 2.714(a)(2). This requirement is also important where, as here, no

hearing is required, and the scope of any hearing that is held might be bounded, in the first instance, by the aspects on which the petitioner wishes to intervene. 10 C.F.R. § 2.714(g) (licensing board has power to limit participation of intervenor to issues affecting its interests); see also Arizona Public Service Co. (Palo Verde Nuclear Generating Station, Units 1, 2, and 3), LBP-91-4, 33 N.R.C. 153, 159 (1991) (aspects of intervention are important in a broad operating license proceeding).

NWC has cited an Atomic Safety and Licensing Board decision that it was unnecessary to identify aspects in a license amendment case. NWC Reply, note 23 supra, at 9, citing Arizona Public Service Co. (Palo Verde Nuclear Generating Station, Units 1, 2, and 3), LBP-91-4, 33 N.R.C. 153, 159 (1991). NWC's reply misses the mark, because BGE's license renewal proceeding is neither a license amendment proceeding, nor any other type of proceeding that is so narrow that the aspects of an intervention might be self evident.

IV. WHILE NWC'S CHALLENGES TO THE COMMISSION'S JULY 28 POLICY STATEMENT AND AUGUST 19 ORDER ARE IRRELEVANT, BOTH THE POLICY STATEMENT AND ORDER ARE LAWFUL

NWC complains of four aspects of the Commission's July 28 Policy Statement²⁷ and/or August 19 Order: (1) the limitations on sua sponte issues; (2) the standard for granting extensions; (3) the establishment of milestones; and (4) the stay of discovery against the NRC staff. NWC Brief at 8, 10-16. Each of these complaints is both irrelevant and without merit.

²⁷ NWC refers to CLI-98-12 as the "August 5 Policy Statement." August 5 is the date the policy statement appeared in the Federal Register.

A. NWC's Complaints Are Irrelevant

NWC's complaint that the Commission improperly limited the Licensing Board's sua sponte authority is irrelevant, because it has no bearing on NWC's failure to meet the standards for intervention. In addition, a Licensing Board has no authority to raise a sua sponte issue where a petitioner has been dismissed and there is therefore no hearing to be conducted. Cf. Florida Power and Light Co. (Turkey Point Nuclear Generating Plant, Units 3 and 4), CLI-91-13, 34 N.R.C. 185, 188-89 (1991). Here, NWC's failure to establish its standing and propose at least one admissible contention deprived the Licensing Board of any authority to raise a matter sua sponte, under any standard. Quite apart from its lack of authority, there is no indication whatsoever in the record that the Licensing Board had any concern of its own, or that it was in any way chilled.

Similarly, the standard for granting extensions is irrelevant, because it ultimately played no role in NWC's dismissal. See discussion in Section I.D above.

There is likewise no indication that the Commission's establishment of milestones affected NWC's dismissal. In fact, when NWC sought additional time from the Commission in which to file its contentions, the Commission gave NWC three more weeks even though that extension made it unlikely that the initial milestone would be met. CLI-98-19, slip op. at 2. Thus, the milestones are hardly the "unyielding schedule" that NWC suggests (see NWC Brief at 8). In any event, NWC's real quarrel is with the NRC's longstanding practice of requiring a petitioner to plead contentions based on the application, with the NRC's rules and precedents prohibiting discovery prior to the admission of contentions, and with the Licensing Board's authority to extend the interval between the filing of contentions and the prehearing conference.

NWC simply refused to comply with the Commission and Licensing Board orders that reflected long-standing practices, and proffer contentions at the beginning of the proceeding. Its dismissal had nothing to do with the milestones.

Finally, the Commission's instruction that discovery against the staff should begin after issuance of the SER and EIS played no role in NWC's dismissal. Both the NRC's regulations and long-standing precedents limit discovery to admitted contentions, and prohibit discovery for the purpose of assisting a petitioner in framing contentions. 10 C.F.R. § 2.740(b)(1); Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 & 2), ALAB-107, 6 A.E.C. 188, 192, aff'd, CLI-73-12, 6 A.E.C. 241 (1973), aff'd sub nom., BPI v. AEC, 502 F.2d 424 (D.C. Cir. 1974); Wisconsin Electric Power Co. (Point Beach Nuclear Plant, Unit 1), ALAB-696, 16 N.R.C. 1245, 1263 (1982); Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), ALAB-687, 15 N.R.C. 460, 467 n.12 (1982). Since NWC never submitted admissible contentions or established its standing, this proceeding never reached the discovery stage.

B. NWC's Complaints Lack Merit

In addition to their irrelevance, NWC's complaints regarding the July 28 policy statement and August 19 order lack merit. Indeed, for the most part, NWC's complaints merely restate arguments that were previously raised in Petition[er]'s (sic) Motion to Vacate Order CLI-98-14 (Aug. 21, 1998) and considered and rejected by the Commission in CLI-98-15.²⁸ The Commission's rulings in CLI-98-15 were correct and need not be repeated.

²⁸ For example, while NWC asserts that there is no basis in law for the Commission to limit "Board-initiated contentions" to "serious safety, environmental or common defense and security matters" (NWC Brief at 11), the Commission previously pointed out that this standard mirrors the language in 10 C.F.R. § 2.760a. CLI-98-15, slip op. at 8 n.6. The Commission also held that the "unavoidable and extreme circumstances" standard simply gives content to the "good cause" standard in section 2.711(a). Id. at 7 n.5.

“Ultimately the members of the Commission are responsible for the actions and policy of [the] agency, and for that reason [it has] inherent authority to review and act upon any adjudicatory matter before a Commission tribunal.” Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), CLI-77-8, 5 N.R.C. 503, 516 (1977). Its power is plenary: “the Commission has explicitly retained supervisory power to step in at any stage of a proceeding to decide any matter itself.” Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), CLI-90-3, 31 N.R.C. 219, 229 (1990). This includes the power to intervene in a proceeding to provide guidance and establish expedited procedures for its conduct. Seabrook, CLI-77-8, 5 N.R.C. at 516-17; Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), CLI-88-9, 28 N.R.C. 567, 569 (1988). The Commission’s power is “subject only to the constraints of action on the record and reasoned explanation of the conclusions -- constraints imposed on all agencies by the Congress.” Seabrook, CLI-77-8, 5 N.R.C. at 516. Therefore, the Commission acted properly in providing guidance to the Board on the conduct of the proceeding.

NWC is wrong in asserting that the provisions of the policy statement constituted improper rulemaking (NWC Brief at 7-10). The Commission has accurately characterized its guidance as a policy statement because it has sought only to “reassess[] and update[] its policy on the conduct of adjudicatory proceedings in view of the potential institution of a number of proceedings in the next few years” (63 Fed. Reg. at 41,872) and has provided guidance and recommendations, not substantial and fundamental changes to its procedures.

The Administrative Procedure Act specifically exempts “interpretative rules [and] general statements of policy” from the notice and comments requirements. 5 U.S.C. §

553(b)(3)(A). "In determining whether an agency statement is a substantive rule, which requires notice and comment, or a policy statement, which does not, the ultimate issue is the 'agency's intent to be bound.'" Public Citizen, Inc. v. NRC, 940 F.2d 679, 681-82 (D.C. Cir. 1991).

Contrary to NWC's assertions that the policy statement contains substantial and fundamental changes of law, the July 28 policy statement simply refines earlier Commission interpretation of its regulations and is couched in terms of guidance, recommendations and expectations. Thus, for example, the Commission "emphasizes its expectation that the boards will enforce adherence to the hearing procedures . . . in 10 C.F.R. Part 2;" states that it has identified certain approaches "for its boards to consider implementing in individual proceedings, if appropriate;" and states that the measures "suggested" can be accomplished within the framework of the Rules of Practice. 63 Fed. Reg. at 41,873 (emphasis added). The policy statement then proceeds to provide "Specific Guidance." The Commission "expects" licensing boards to establish schedules. Boards "should" exercise authority under the regulations to shorten filing and response times "to the extent practical." Boards "should" establish procedures for electronic filing (id.), and so forth.

In sum, the policy statement does not create binding new rights and obligations in adjudicatory hearings but simply provides guidance for how hearings should be conducted to ensure fair but prompt decisions. The statement calls for the prudent use of the Board's power due to the increased demand on the Commission's limited resources and the need for timely decisions on licensing issues. The agency's characterization of its statement is entitled to deference. Community Nutrition Inst. v. Young, 818 F.2d 943, 946 (D.C. Cir. 1987).

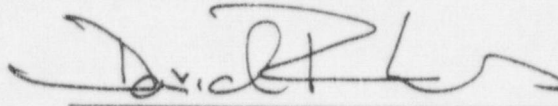
NWC is also wrong in asserting that the Commission's August 19 Order was an abuse of the agency's discretion (NWC Brief at 10-11). That Order was a proper exercise of the Commission's authority to set procedures in licensing proceedings and did not deprive the NWC of a meaningful opportunity to participate. Courts "do not doubt the authority of the NRC to change its procedures on a case-by-case basis with timely notice to the parties involved." City of West Chicago v. NRC, 701 F.2d 632, 647 (7th Cir. 1983).

Here, the Commission's Order gave the NWC clear, precise and timely notice of what procedures would govern the licensing hearing. In addition, no reasonable party should have been caught off-guard by the suggested milestones, since the July 28 policy statement clearly states that the Commission intended to conduct licensing hearings in a prompt and efficient manner.

CONCLUSION

For all of the reasons stated above, the Licensing Board's October 16, 1998 Memorandum and Order should be affirmed. The Licensing Board set reasonable deadlines for NWC's contentions, as authorized by the Commission's Rules of Practice, and NWC simply refused to comply. Under these circumstances, NWC's dismissal was both justified and necessary to maintain the fairness, efficiency and dignity of the Commission's adjudicatory process.

Respectfully submitted,



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Dated: November 5, 1998

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FOR IMMEDIATE RELEASE

SECRET NRC LICENSE RENEWAL PROCESS FOR CALVERT CLIFFS NUCLEAR PLANT UNCOVERED

*Newly Released Documents Show Major Safety Issues
Confront First Utility to Request 20-year Nuke Plant License Extension*

Washington, D.C., October 13, 1998 -- *The National Whistleblower Center* has obtained access to previously undisclosed NRC documents which reveal the existence of major ongoing unresolved safety issues if the NRC approves the application to extend the operating life of the Calvert Cliffs nuclear plant for an additional 20 years.

The documents, which consist of nineteen (19) letters sent by the NRC Staff to Baltimore Gas & Electric Company ("BG&E") about the utility's pending license renewal application for the Calvert Cliffs nuclear plant, reveal unresolved aging-related safety issues concerning every significant safety component of the plant, including serious questions about the following matters:

safety related "effects of erosion/corrosion," "wall thinning," "corrosion degradation" and "piping cracking";

"boric acid corrosion" and "microbiologically induced corrosion";

issues related to the "Fatigue Monitoring Program," past "fatigue failures" at Calvert Cliffs, "vibrational fatigue" and "stainless steel fatigue";

"preventive actions that will mitigate or prevent aging degradation";

aging problems with the "Reactor Coolant System";

"crack growth," "leakage of primary coolant" and "cracking" of the large and small "piping";

"thermal embrittlement";

"cracking of reactor vessel";

"aging degradation of heating and ventilation systems";

"design and installation deficiencies," "mechanical wear" and "stress corrosion";

"seismic adequacy of equipment";

"concrete cracking" and the "recurring degradations of the structural components" of the plant;

"corrosion of steel," "corrosion" and "degradation" of "protective coatings";

"preventative maintenance" to detect "electrical stressors"; and



"risk" of "potential core damage" and a "loss of coolant accident."

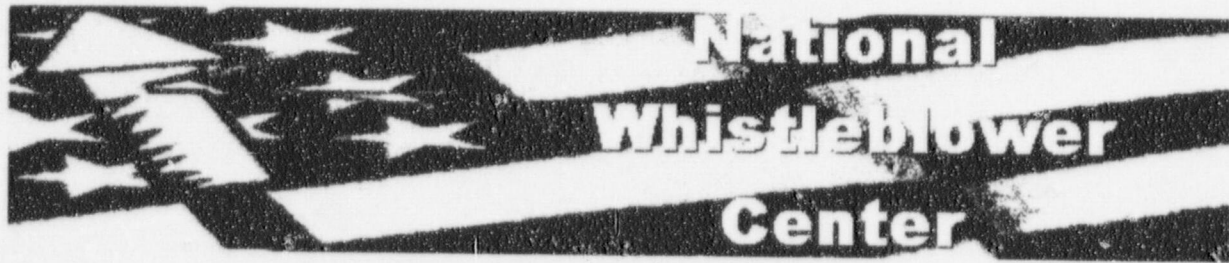
BG&E is the first electric utility in the United States to seek permission from the NRC to operate a nuclear plant beyond its initial 40 year approval time-frame. The *Center* is the only organization intervening in the proceeding on behalf of the public interest before a NRC Licensing Board.

The 19 NRC Staff letters in question were improperly withheld from the *Center* and the Licensing Board in violation of standing NRC orders which mandate that public interest interveners, such as the *Center*, be promptly notified of such matters. In addition, the NRC Staff and BGE held a meeting on September 28, 1998 concerning the status of the Calvert Cliffs license renewal application without providing proper public notice in violation of the NRC's policy on open meetings.

"Without full public access to critical safety issues, the health and safety of the public cannot be protected," said Stephen Kohn, an attorney representing the *Center* in the Calvert Cliffs licensing proceeding. "The NRC Staff's action in hiding from the *Center* and the Licensing Board these 19 letters about major unresolved safety issues and its secret meeting with BGE amounts to a secret licensing proceeding," he added. "The failure to timely file these documents and provide notice of a public meeting to the intervener violated both due process and public safety. Until every major safety issue is publicly identified and properly adjudicated, Calvert Cliffs nuclear license cannot be renewed," Kohn said.

- end -


[Top of this page](#) | [Home](#) | [News/Events](#) | [FBI Whistleblowers](#) | [Forensic Justice Project](#) | [Tainting Evidence](#) | [Nuclear Watch](#) | [EPA Employees](#) | [Attorney Referral Service](#) | [Legal Protections](#) | [Publications](#) | [Internships](#) | [Contributions](#) | [Legal Resources](#) | [Links](#) | [Mailing List](#) | [E-mail Us](#)




NUCLEAR WATCH

WHAT'S HAPPENING AT YOUR NUKE?

It is important to keep abreast of the safety record and events of the nuclear power plant near you and to know your rights and responsibilities. By staying informed, you can protect yourself and others.

1. Federal Register Notices

Each day, the government publishes the Federal Register, which is a compilation of notices, rules and other documents concerning public agencies. You can search the Federal Register, via the internet, to find notices of applications for renewal or amendments to current nuclear operating licenses for the facility near you. When you get to the Federal Register site, click the box for 1998 and then click the box next to "Notices." Scroll down the page and enter the dates for which you want to search. Next, enter the following search term: nuclear AND license and then hit the search key.

2. Public Document Room

The NRC maintains a Public Document Room (PDR) which houses materials about the individual plants and makes them available for public use. The main PDR is located in Washington, D.C. but near each nuclear plant there are public and university libraries which also contain NRC documents. Included in the materials at the PDR are inspection reports, which detail problems at the plants and Notices of Violations issued by the NRC. The link above takes you to a list of all the local PDR's.

3. Intervening in a Licensing Proceeding

If you search the Federal Register and find a notice regarding an operating license for a facility from which you live within a fifty mile radius, you may choose to intervene in the licensing renewal/amendment process. There are several requirements to qualify as an intervenor. You should review 10 C.F.R. §2.105 and 10 C.F.R. § 2.714 for more information. The Center also recommends contacting an attorney knowledgeable in the process of intervening in a nuclear licensing proceeding or contacting the Center for further assistance.

4. Request for Action/Filing a §2.206 Petition

If you have specific concerns regarding the safe operation of a nuclear facility, you may file a petition under 10 C.F.R. § 2.206 requesting action under 10 C.F.R. Subpart B, "Procedure for Imposing Requirements by order, or for Modification, Suspension, or Revocation of a Licence, or for Imposing Civil Penalties."

In such a petition, you must detail your concerns, state your argument and provide information to support your claim. The Center recommends contacting an attorney knowledgeable in the process of filing a §2.206 petition or contacting the Center for further assistance.

5. NRC's Watch List

Identifies plants that require additional oversight due to declining performance.



6. Nuclear Reactor Information

Check plant information and status.

7. NRC Open Meetings

List all of the NRC Meetings that are open to the public.

8. Legal Protections for Nuclear Whistleblowers

 [Top of this page](#) | [Home](#) | [News/Events](#) | [FBI Whistleblowers](#) | [Forensic Justice Project](#)
| [Tainting Evidence](#) | [Nuclear Watch](#) | [EPA Employees](#) | [Attorney Referral Service](#) | [Legal Protections](#) | 
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**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

Before the Commissioners

In the Matter of)	
)	Docket Nos. 50-317-LR
Baltimore Gas and Electric Company)	50-318-LR
)	
(Calvert Cliffs Nuclear Power Plant,)	ASLBP No. 98-749-01-LR
Units 1 and 2))	

CERTIFICATE OF SERVICE

I hereby certify that copies of "Baltimore Gas and Electric Company's Brief in Opposition to the Appeal of the National Whistleblower Center," dated November 5, 1998, were served upon the persons listed below by hand delivery, this 5th day of November, 1998. Where indicated by an asterisk, conforming copies were also served by electronic mail this same date.

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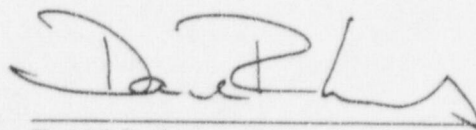
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