

August 19, 1998

MEMORANDUM FOR: L. Joseph Callan
Executive Director for Operations

John F. Cordes, Acting Director
Office of Commission Appellate Adjudication

FROM: John C. Hoyle, Secretary /s/

SUBJECT: STAFF REQUIREMENTS - Affirmation Session, 11:30 A.M., WEDNESDAY, AUGUST 19,
1998, COMMISSIONERS' CONFERENCE ROOM, ONE WHITE FLINT NORTH, ROCKVILLE,
MARYLAND (OPEN TO PUBLIC ATTENDANCE)

I. COMSECY-98-018 - CASE-SPECIFIC ORDER FOR LICENSE RENEWAL PROCEEDINGS

The Commission⁽¹⁾ approved an order governing the conduct of the license renewal proceeding in Baltimore Gas and Electric Company's application for license renewal for the Calvert Cliffs Nuclear Power Plant. The order contains milestones for completion of certain activities related to the license renewal proceeding to be applied in the event that a hearing request is granted. These milestones include shortened filing and response times relative to those set forth in 10 CFR Part 2, Subpart G, and an abbreviated discovery schedule.

(Subsequently, on August 19, 1998, the Secretary signed the Order.)

cc: Chairman Jackson
Commissioner Diaz
Commissioner McGaffigan
EDO
OGC
CIO
CFO
OCAA
OCA
OIG
Office Directors, Regions, ACRS, ACNW, ASLBP (via E-Mail)
PDR - Advance
DCS - P1-17

UNITED STATES
NUCLEAR REGULATORY COMMISSION

COMMISSIONERS:

Shirley Ann Jackson, Chairman
Nils J. Diaz
Edward McGaffigan, Jr.

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

)

**ORDER REFERRING PETITION FOR INTERVENTION AND
REQUEST FOR HEARING TO
ATOMIC SAFETY AND LICENSING BOARD PANEL**

CLI-98-14

- I. Introduction
- II. Commission Guidance
 - A. Scope of Proceeding
 - B. Discovery Management
 - C. Proposed Schedule
- III. Conclusion

I. Introduction

On April 10, 1998, Baltimore Gas & Electric Company (Applicant) submitted an application to renew the operating licenses for its Calvert Cliffs Nuclear Power Plant Units 1 and 2, located in Lusby, Maryland. The notice of receipt of application was published in the *Federal Register* on April 27, 1998. *Baltimore Gas & Electric Company; Calvert Cliffs Nuclear Power Plant Units 1 & 2; Notice of Receipt of Application for Renewal of Facility Operating Licenses Nos. DPR-53 and DPR-69 for an Additional 20-Year Period*, 63 Fed. Reg. 20,663 (1998). A notice of acceptance for docketing of the application for renewal of the facility operating licenses was published in the *Federal Register* on May 19, 1998. *Baltimore Gas & Electric Company; Calvert Cliffs Nuclear Power Plant Units 1 and 2; Notice of Acceptance for Docketing of the Application for Renewal of Facility Operating Licenses Nos. DPR-53 and DPR-69 for an Additional 20-Year Period*, 63 Fed. Reg. 27,601 (1998). On July 8, 1998, the staff of the Nuclear Regulatory Commission (Staff) issued a *Notice of Opportunity for a Hearing*. 63 Fed. Reg. 36,966 (1998).

On August 7, 1998, the National Whistleblower Center filed a "Petition to Intervene and Request for Hearing of the National Whistleblower Center" (Petition) in accordance with 10 C.F.R. ? 2.714. This Order refers the Petition to the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel for assignment of an Atomic Safety and Licensing Board to rule on this and any additional requests for a hearing and petitions for leave to intervene and, if a hearing is granted, to conduct the proceeding. We also provide the Licensing Board with guidance for the conduct of any proceeding if a hearing is granted, and a suggested schedule for any such proceeding.

II. Commission Guidance

A. SCOPE OF PROCEEDING

The scope of this proceeding is limited to a review of the plant structures and components that will require an aging management review for the period of extended operation and the plant's systems, structures and components that are subject to an evaluation of time-limited aging analyses. See 10 C.F.R. ?? 54.21(a) and (c), 54.4; *Nuclear Power Plant License Renewal; Revisions, Final Rule*, 60 Fed. Reg. 22,461 (1995). In addition, review of environmental issues is limited in accordance with 10 C.F.R. ?? 51.71(d) and 51.95(c). See NUREG-1437, "Generic Environmental Impact Statement (GEIS) for License Renewal of Plant;" *Environmental Review for Renewal of Nuclear Power Plant Operating Licenses, Final Rule*, 61 Fed. Reg. 28,467 (1996), *amended by* 61 Fed. Reg. 66,537 (1996). The Licensing Board shall be guided by these regulations in determining whether proffered contentions meet the standard in 10 C.F.R. ? 2.714(b)(2)(iii). It is the responsibility of the petitioner to provide the necessary information to satisfy the basis requirement for the admission of its contentions and demonstrate that a genuine dispute exists within the scope of this proceeding. If rulings on the admission of contentions or the admitted contentions themselves raise novel legal or policy questions, the Licensing Board should readily refer or certify such rulings or questions to the Commission on an interlocutory basis. The Commission itself is amenable to such early involvement and will evaluate any matter put before it to ensure that substantive interlocutory review is warranted.

The Commission expects that matters within the scope of this proceeding but not put into controversy will be considered by the Licensing Board only where the Licensing Board finds that a serious safety, environmental, or common defense and security matter exists. Such consideration should be exercised only in extraordinary circumstances. If the Licensing Board decides to raise a matter on its own initiative, a copy of its ruling, setting forth in general terms its reasons, must be transmitted to the Commission and General Counsel. The Licensing Board should not proceed to consider such *sua sponte* issues unless the Commission approves the Licensing Board's proposal to do so.

B. DISCOVERY MANAGEMENT

Similar to the practice under current Rule 26 of the Federal Rules of Civil Procedure, if a hearing is granted, the Licensing Board should order the parties to provide certain information to the other parties without waiting for discovery requests. This information will include the names and addresses of individuals likely to have discoverable information relevant to the admitted contentions, the names of individuals likely to be witnesses in this proceeding, the identification and production of documents (not already publicly available) that will likely contain discoverable information, and any other information relevant to the admitted contentions which the Licensing Board may require in its discretion.

Within 30 days of any Licensing Board order granting a request for a hearing, the Staff shall file in the docket, present to the Licensing Board, and make available a case file to the applicant and any other party to the proceeding. The Staff will have a continuing obligation to keep the case file up to date, as documents become available. The case file will consist of the application and any amendments thereto, the Final Environmental Impact Statement (in the form of a plant-specific supplement to the GEIS), any Staff safety evaluation reports relevant to the application, and any correspondence between the applicant and the NRC that is relevant to the application. Formal discovery against the Staff, pursuant to 10 C.F.R. ?? 2.720(h), 2.740, 2.742, and 2.744, regarding the Safety Evaluation Report (SER) and the Final Supplemental Environmental Impact Statement (FES) will be suspended until after

issuance of these documents.

The Licensing Board, consistent with fairness to all parties, should narrow the issues requiring discovery and limit discovery to no more than one round each for original and late-filed contentions.

C. PROPOSED SCHEDULE

The Commission directs the Licensing Board to set a schedule for any hearing granted in this proceeding that establishes as a goal the issuance of a Commission decision on the pending application in about two and one half years from the date that the application was received. In addition, if the Licensing Board grants a hearing, once the Licensing Board has ruled on any petition for intervention and request for a hearing, formal discovery against the Staff should be suspended until after the Staff completes its final SER and FES, subject to the discretion of the Licensing Board to proceed with discovery on either the FES or final SER as discussed in footnote 1, above. The evidentiary hearing should not commence until after completion of the final SER and FES.

The Commission believes that the goal of issuing a decision on the pending application in about two and one half years may be reasonably achieved under the current rules of practice and the enhancements directed by this order and by our understanding of the Staff's current schedule for review of the application. We do not expect the Licensing Board to sacrifice fairness and sound decision-making to expedite any hearing granted on this application. We do expect, however, the Licensing Board to use the techniques specified in this order and in the Commission's policy statement on the conduct of adjudicatory proceedings to ensure prompt and efficient resolution of contested issues. See *Statement of Policy on Conduct of Adjudicatory Proceedings*, CLI-98-12, 44 NRC ____ (1998). See also *Statement of Policy on Conduct of Licensing Proceedings*, CLI-81-8, 13 NRC 452 (1981).

If a hearing is granted, in developing a schedule, the Licensing Board should adopt the following milestones for conclusion of significant steps in the adjudicatory proceeding:

- Within 90 days of the date of this order: Decision on intervention petitions and contentions. Start of discovery on admitted contentions, except against the Staff
- Within 30 days of the issuance of SER and FES: Completion of discovery against the Staff on admitted contentions. Late-filed contentions to be filed
- Within 40 days of the issuance of SER and FES: Responses to late-filed contentions to be filed
- Within 50 days of the issuance of SER and FES: ASLB decision on late-filed contentions
- Within 80 days of the issuance of SER and FES: Completion of discovery on late-filed contentions
- Within 90 days of the issuance of SER and FES: Pre-filed testimony to be submitted
- Within 125 days of the issuance of SER and FES: Completion of evidentiary hearing
- Within 220 days of the issuance of SER and FES: ASLB initial decision on application

To meet these milestones, the Licensing Board should direct the participants to serve all filings by electronic mail (in order to be considered timely, such filings must be received by the Licensing Board and parties no later than midnight Eastern Time on the date due, unless otherwise designated by the Licensing Board), followed by conforming hard copies that may be sent by regular mail. If participants do not have access to electronic mail, the Licensing Board should adopt other expedited methods of service, such as express mail, which would ensure receipt on the due date ("in-hand"). If pleadings are filed by electronic mail, or other expedited methods of service which would ensure receipt on the due date, the additional period provided in our regulations for responding to filings served by first-class mail or express delivery shall not be applicable. See 10 C.F.R. ? 2.710. In addition, to avoid unnecessary delays in the proceeding, the Licensing Board should not grant requests for extensions of time absent unavoidable and extreme circumstances. The Licensing Board shall not entertain motions for summary disposition under 10 C.F.R. ? 2.749, unless the Licensing Board finds that such motions are likely to substantially narrow the issues for which an evidentiary hearing is necessary or will otherwise expedite the proceeding. Unless otherwise justified, the Licensing Board shall provide for the simultaneous filing of answers to proposed contentions, responsive pleadings, proposed findings of fact, and other similar submittals.

In addition, parties are obligated in their filings before the Licensing Board and the Commission to ensure that their arguments and assertions are supported by appropriate and accurate references to legal authority and factual basis, including, as appropriate, citation to the record. Failure to do so may result in material being stricken from the record or, in extreme circumstances, in a party being dismissed.

If a hearing is granted on this application, the Commission directs the Licensing Board to promptly inform the Commission, in writing, if the Licensing Board determines that any single milestone could be missed by more than 30 days. The Licensing Board should include an explanation of why the milestone cannot be met and the measures the Licensing Board will take to mitigate the failure to achieve the milestone and restore the proceeding to the overall schedule.

III. Conclusion

The Commission directs the Licensing Board to conduct this proceeding in accordance with the guidance specified in this order. As in any proceeding, the

Commission retains its inherent supervisory authority over the proceeding to provide additional guidance to the Licensing Board and participants and to resolve any matter in controversy itself.

It is so ORDERED.

For the Commission

John C. Hoyle
Secretary of the Commission

Dated at Rockville, Maryland
this ____ day of August 1998.

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1. Section 201 of the Energy Reorganization Act, 42 U.S.C. Section 5841, provides that action of the Commission shall be determined by a "majority vote of the members present." Chairman Jackson and Commissioner McGaffigan were present in the Conference Room. Commissioner Diaz participated in the meeting via speakerphone.
 2. The above discussion is based on the Staff's review schedule for the BG&E application, which indicates that the final SER and FES will be issued fairly close in time. If this is not the case, the Board, in its discretion, may allow the commencement of discovery against the Staff on safety issues if the final SER is issued before the FES or on environmental issues if the FES is issued before the final SER.