

**BEFORE THE
UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD**

DOCKETED
USNRC

'98 SEP 11 AM 11:53

In the Matter of)

BALTIMORE GAS
& ELECTRIC CO.,
et al.,)

(Calvert Cliffs Unit 1 and
Unit 2))

Docket Nos. 50-317 and 50-318
License Renewal

ASLBP No. 98-749-01-LR

August 21, 1998

OFFICE OF THE
RULING
ADJUDICATOR

PETITIONER'S MOTION FOR ENLARGEMENT OF TIME

Through a Memorandum and Order dated August 20, 1998 this Board set forth its Initial Pre-hearing Order. For good cause shown, Petitioner requests that the prehearing conference set for the week of October 13, 1998 be postponed, and that the prehearing conference be held on or after the week of December 1, 1998. In addition, Petitioner requests that this Board clarify its Order concerning the deadline for filing contentions and a supplement to the intervention proceeding.

ARGUMENT

Pursuant to 10 C.F.R. § 2.711, the Petitioner is entitled to an enlargement for filing deadlines in the above-captioned proceeding if it can demonstrate "good cause." In addition, pursuant to the Administrative Procedure Act, 5 U.S.C. § 544(b)(3), this Board is required to set the "time and place for hearings" with "due regard" for the

“convenience and necessity of the parties or their representatives.”¹ Under the APA, this Board also must establish time-tables within a “reasonable” period, taking into full account the “rights and privileges of all interested parties.” 5 U.S.C. § 588(c).

It is well established that proper consideration of a request for enlargement of time must “evaluate each case on its own facts.” U.S. v. Lussier, 929 F.2d 25, 28 (1st Cir. 1991). Among the “factors” considered in this case-by-case approach is the “amount of time available for preparation,” the “likelihood of prejudice” and the “degree of complexity of the case.” Id. In this proceeding, all of the factors weigh heavily in favor of granting the continuance. First, the NRC regulations concerning admissible contentions are very burdensome. Petitioner must not only identify each contention. Petitioner must articulate a sufficient factual basis for each contention. Given the “complexity” of this proceeding, and the need to obtain expert witnesses to carefully

- In its August 20, 1998 Memorandum and Order, this Board held that it was adopting the NRC Commission’s guidance concerning enlargements of time. Memorandum and Order, p. 10 (setting forth an “unavoidable and extreme circumstances” standard for enlargements of time). The NRC Commission’s guidance on this matter is in conflict with the published regulations of the NRC and in conflict with the Administrative Procedure Act. Consequently, Petitioner is seeking an enlargement of time under the controlling legal standard. The Petitioner has, today, filed a motion with the NRC Commission seeking that they vacate Part II of their Order No. CLI-98-14 and have specifically requested that the Commission set aside that portion of its Order concerning the requirements for enlargement of time. In any event, for the reasons set forth in this motion, the Petitioner’s need to postpone the prehearing conference and the deadline for filing contentions is “unavoidable” and constitutes an “extreme circumstance.” The need for sufficient time to retain experts who can be properly prepared to assist in the preparation of contentions is “unavoidable.” This is an “extreme circumstance” given the very short time period set forth in the ASLB’s order for the Petitioner to properly prepare potentially complex contentions on a matter of extreme public interest and on a matter which will have a major impact on the public health and safety.

review a considerable body of material, there simply is not enough “time available” for proper “preparation” of the contentions between the date the proceeding was commenced and September 11, 1998.

Petitioner has not been sitting on its rights or responsibilities. Petitioner has already obtained agreements from a number of eminent experts to provide assistance in this complex and technical matter. These include persons with significant experience in radiation protection, maintenance, design engineering and nuclear engineering. These experts cannot provide appropriate opinions by the September 11th deadline. Moreover, given the important public health and safety issues at stake in this proceeding, Petitioner is still in the process of obtaining additional experts to assist in the formulation of valid contentions which, when admitted, will greatly assist in insuring the safety of plants which obtain license renewals.

In order to properly meet the strict requirements set forth in 10 C.F.R. § 2.714(b), Petitioner must be granted an enlargement of time in order to insure that its experts can review the voluminous and complex materials which form the basis for Applicant’s request. This is the first renewal proceeding in the United States and many of the safety issues are new or under current consideration. Even the NRC Staff has not completed its review of the issues relevant to reaching various safety related conclusions.

Petitioner is mindful that the NRC Commission has issued “guidance” in this matter and has set forth a schedule for this proceeding. Petitioner has filed, today, a motion to the NRC Commission to vacate that “guidance” and allow the Board to comply

with the existing and binding procedures for adjudicatory proceedings as set forth in the Administrative Procedure Act and the binding regulations codified in 10 CF.R. Part 2. A copy of this motion is being served on the Board. Moreover, even the NRC Commission has recognized that this Board cannot “sacrifice fairness and sound decision-making” merely in the name of meeting a schedule. CLI-98-14, p. 5.

Pursuant to the Administrative Procedure Act, 5 U.S.C. 554(b)(3), an enlargement of time is a “necessity.” Without an enlargement of time, the Petitioner will not be able to properly retain experts in this matter and use this expert testimony to establish proper contentions.

Petitioner also seeks a clarification of the Board’s Initial Pre-hearing Order. In that Order, the Board stated that any contentions filed after September 11, 1998 would be considered “a late-filed contention.” However, Petitioner understands that the controlling regulations allow non-late filed contentions (and an amended petition to intervene) to be filed within fifteen days of the first pre-hearing conference. Consequently, Petitioner respectfully requests that this Board clarify its Initial Pre-hearing Order in a manner consistent with 10 C.F.R. § 2.714(a)(3). Also see, Georgia Power Company, 32 NRC 89, 93 (1990). In addition, the Federal Register notice which initiated this proceeding directly stated that Petitioner would have up to “fifteen days prior to the first pre-hearing conference” to “file a supplement to the petition to intervene” and “include a list of contentions.” 63 Federal Register No. 130, p. 36966.

Petitioner has contacted counsel for the NRC Staff and the Applicant and they have indicated that they will not consent to this motion.

CONCLUSION

For good cause shown, and due to the “necessity” of one of the parties, the pre-hearing conference in this case should be set for the first week of December, 1998, and Petitioner’s amended petition and list of contentions should be filed prior to 15 days before said conference.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'SK', written over a horizontal line.

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OFFICE OF THE
REGISTERED
ADJUTANT GENERAL

CERTIFICATE OF SERVICE

I hereby certify that Petitioner's Motion for Enlargement of Time was served this August 21, 1998 on the following persons by First Class Mail and, where noted, by fax.

Robert Weisman
Marian Zobler
Office of General Counsel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

* G. Paul Bollwerk, III, Chairman
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

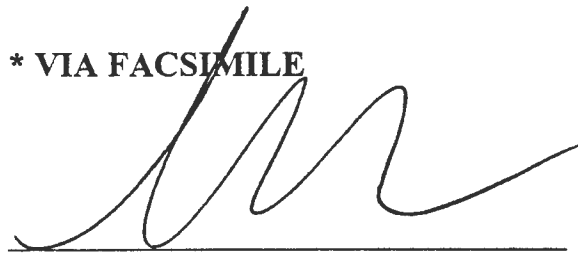
* Dr. Jerry R. Kline
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* VIA FACSIMILE

A handwritten signature in black ink, appearing to be 'SK', written over a horizontal line.

Stephen M. Kohn

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