

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

DOCKETED
USNRC

*98 SEP 14 P12:14

OFFICE OF THE SECRETARY
ADJUTANT GENERAL

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

September 11, 1998

**PETITIONER'S FILING IN RESPONSE TO THE BOARD'S
INITIAL PREHEARING ORDER**

BACKGROUND

On July 8, 1998 the Nuclear Regulatory Commission ("NRC") published a notice in the Federal Register concerning the above-captioned proceeding. 63 Federal Register No. 130, pp. 36,966-67 (July 8, 1998). On August 7, 1998 Petitioner filed its Petition to Intervene and Request for a Hearing in the above-captioned proceeding. On August 19, 1998 the NRC Commission issued its Order Referring Petition for Intervention and Request for Hearing to Atomic Safety and Licensing Board Panel. Petitioner objected to portions of this order and requested that the NRC Commission vacate the order. See Petitioner's Motion to Vacate Order CLI-98-14. The NRC Commission denied this motion.

On August 20, 1998 this Board issued a Memorandum and Order (Initial Prehearing Order) (hereinafter "Order"). Among other determinations, this Order required Petitioner to file its "supplement to its hearing petition/intervention request" and to file its "list of contentions and supporting bases" on or before September 11, 1998. Order at p. 3. This Order also ruled that

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any contention filed after September 11, 1998 would be “considered a late-filed contention.” Id. The Order also stated that the first prehearing conference would be held during the week of October 13, 1998. Order at 4.

On August 21, 1998 Petitioner filed a Motion for Enlargement of Time in which the Petitioner asked that the date of the prehearing conference be postponed and that the date for filing the supplemental petition and contentions be set for 15 days prior to the prehearing conference. Petitioner also asked the Board to clarify its order concerning the right of Petitioner to file its supplemental petition to intervene and its list of contentions fifteen days prior to the prehearing conference.

On August 27, 1998 Petitioner’s August 21, 1998 motion was denied in its entirety. ASLB Memorandum and Order (Denying Time Extension Motion and Scheduling Prehearing Conference). Among other determinations, the Board held that the Petitioner did not have a right to file contentions up to fifteen days before the initial prehearing conference. The Board “established a deadline for filing intervention petition supplements that is not tied to the prehearing conference schedule” and reaffirmed its prior ruling that contentions submitted after September 11, 1998 would be “considered late-filed.” August 27th ASLB Order pp. 3-4. Finally, this Board set a prehearing conference date of October 15, 1998. ASLB Order of August 27, 1998.

PETITIONER’S RESPONSE

Petitioner respectfully disagrees with this Board’s August 27, 1998 ruling concerning the date in which Petitioner must file its supplement to its petition to intervene and the date in which the Petitioner must file its list of contentions. The published regulations of the Commission and

the published Federal Register notice which gave rise to this proceeding each holds that Petitioner may make the above-referenced filings fifteen days prior to the first prehearing conference. Consequently, Petitioner should have had, under the current schedule, until September 30, 1998 to make the required filings and to further address matters related to standing, contentions and other issues relevant to its right to participate in this proceeding pursuant to the July 8th Federal Register notice and the Atomic Energy Act.

With all due respect to the decisions issued by this Board, Petitioner maintains the right to file its supplemental filings consistent with the regulations and the Federal Register notice. These authorities permit Petitioner to file is supplemental petition to intervene and to set forth its contentions within fifteen days of the first prehearing conference. The published regulations of the NRC Commission have the force and effect of law and are binding upon this Board and the NRC Commission.

Additionally, Petitioner has reviewed the law and regulations concerning late-filed contentions and has concluded, in good faith, that any filings submitted after September 11, 1998 could not meet the strict late-filed standards. Specifically, this Board has already ruled that cause does not exist for mandating that the time schedule for this proceeding be consistent with the published regulations of the NRC. Additionally, given the arbitrary, capricious and improper scheduling “milestones” established by the Commission in their August 19th Order, granting the admission of late-filed contentions would violate the letter and sprit of that order. Petitioner firmly believes that the Commission’s August 19th Order, and this Board’s clear indication that it shall conduct this proceeding in accordance with that Order, renders it impossible for Petitioner to meet the late-filed contention requirements and renders it impossible for the Petitioner to

obtain a fair and impartial hearing consistent with the controlling law and regulations. See, e.g. 10 C.F.R. §§ 2. 714, 2.718 and 2.756 . Additionally, as was set forth in Petitioner's request to the Commission to vacate its August 19th Order, which was served upon this Board, any adjudication conducted under the regime mandated by the NRC Commission's directive could not be conducted consistent with the above-referenced regulations, the Atomic Energy Act and/or the Administrative Procedure Act. Consequently, filing contentions after September 11th would be futile and would only delay this proceeding.

Petitioner also respectfully maintains that the Commission's August 19, 1998 Order Referring Petition for Intervention and Request for Hearing to Atomic Safety and Licensing Board Panel is, for reasons already set forth before the Commission, illegal, improper, arbitrary, capacious, an abuse of discretion and otherwise inconsistent with law and controlling regulations. Additionally, Petitioner respectfully maintains that this Board committed error when it followed the "direction" of the Commission and allowed this "direction" to impact on the scheduling of this proceeding and adopted the Commission's improper standard for reviewing requests for enlargement of time.

It would serve the interests of justice and would expedite the final resolution of the licensing issues related to the above-captioned proceeding for this the Board to issue orders which would allow the Petitioner to seek immediate review of the orders of the Commission and the orders of this Board to which the Petitioner has objected. In this regard, the Petitioner is also filing a petition for review of this Board's August 27, 1998 Memorandum and Order.

Given the importance of public participation in this proceeding, as recognized by the Atomic Energy Act, the Energy Reorganization Act and the U.S. Court of Appeals for the District of Columbia Circuit,^{1/} a timely resolution of these procedural matters is in the public interest. In this regard, either the NRC must insure that this proceeding is conducted consistent with Administrative Procedure Act, the Atomic Energy Act and the published regulations of the NRC, or the NRC should issue appropriate orders to insure that the Court of Appeals can conduct a timely review of these procedural matters.

Respectfully submitted,



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September 11, 1998

^{1/}See, e.g. Union of Concerned Scientists v. NRC, 735 F.2d 1437 (D.C. Cir. 1984).

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CERTIFICATE OF SERVICE

I hereby certify that Petitioner's Petition for Review filed before the NRC Commission and a copy of Petitioner's Filing in Response to the Board's Initial Prehearing Order was served this September 11, 1998 on the following persons by First Class Mail and, where marked, by facsimile:

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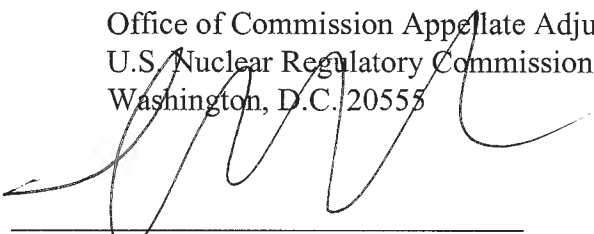
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