

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

DOCKETED
USNRC

'98 SEP 21 A10:17

OFFICE OF THE SECRETARY
RULEMAKING AND
ADJUDICATION STAFF

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 18, 1998

**PETITIONER'S MOTION TO VACATE PRE-HEARING
CONFERENCE OR IN ALTERNATIVE FOR AN EXTENSION OF TIME**

Through a Memorandum and Order dated August 20, 1998 the Board set forth its Initial Pre-hearing Order and stated its intention to hold a pre-hearing conference during the week of October 13, 1998. Petitioner hereby requests that the Board's Initial Pre-hearing Order as it pertains to the pre-hearing conference be vacated and that the pre-hearing conference be postponed until after the close of discovery. In the alternative, the Petitioner requests for good cause a one day extension of time to file contentions. BGE and NRC Staff consent to the one-day extension of time.

ARGUMENT

Pursuant to 10 C.F.R. Part 2, there are two types of pre-hearing conferences. The first is found in 10 C.F.R. §2.751(a) Special prehearing conference in construction permit and operating license proceedings. This form of pre-hearing conference is not applicable

19534

in this case. This case is for an extension of an operating license and therefore this rule is not applicable.^{1/}

The second type of pre-hearing conference is set out in 10 C.F.R. §2.752 . This regulation clearly indicates that this type of pre-hearing conference should be held after the close of discovery.^{2/} Holding such a pre-hearing conference before the close of discovery is premature. At this time no contentions have even been admitted to the proceeding and therefore a pre-hearing conference during the week of October 13, 1998 would be non-productive and serve to delay the proceeding. Furthermore, consistent with §2.752 , Petitioner requests at least minimum partial discovery (without waiving its right to full discovery) prior to the pre-hearing conference to assist in the formulation of its non-late filed contentions.

In the alternative, Petitioner requests, for good cause shown, a one day extension of the September 30, 1998 filing date set by the Commission in CLI-98-19, 48 NRC ___, slip op. at 2 (September 17, 1998). This filing date falls on Yom Kippur, the most important of the Jewish holy days. Both of Petitioner's attorneys, Mr. Stephen M. Kohn

^{1/}The Court of Appeals for the District of Columbia Circuit has held that a request of an extension of an operating license constitutes an amendment within the meaning of Section 189(a) of the Atomic Energy Act. San Luis Obispo Mothers for Peace v. NRC, 751 F.2d 1287, 1314 (DC Cir. 1985)(Concerns of public safety are more strongly implicated by the extension of an operating license)(emphasis added).

^{2/}A prehearing conference held under this section in a proceeding involving a construction permit or operating license shall be held within sixty (60) days after discovery has been completed or such other time as the Commission or the presiding officer may specify. 10 C.F.R. §2.752(a)(6).

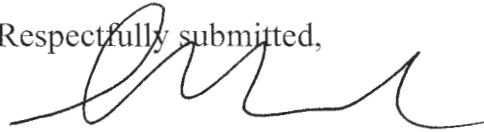
and Mr. Michael D. Kohn are Jewish and observe this holy day. To hold Petitioner to this filing date would create an undue hardship on Petitioner's attorneys. Petitioner requests, to ensure that it has an adequate opportunity to introduce matters of safety or environmental concern into the Calvert Cliffs proceeding that the filing date be extended until close of business on October 1, 1998.

The Petitioner has contacted both counsel for NRC and BGE regarding this motion. They do not consent to Petitioner's Motion to Vacate and Postpone the pre-hearing conference until the close of discovery. However, they both consent to the one-day extension for Petitioner to file contentions due to their observance of Yom Kippur.

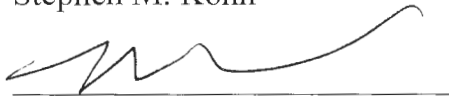
CONCLUSION

For the reasons stated above the Petitioner requests that the this Motion to Vacate be granted and the pre-hearing conference be postponed until after the close of discovery. In the alternative, for good cause shown, the Petitioner requests the filing date for contentions be extended until close of business on October 1, 1998.

Respectfully submitted,



Stephen M. Kohn



Michael D. Kohn

3233 P Street, N.W.
Washington, D.C. 20007
(202) 342-2177

Attorneys for Petitioner
National Whistleblower Center

CERTIFICATE OF SERVICE

DOCKETED
USNRC

I hereby certify that the foregoing document was served this September 18, 1998, on the following persons by First Class Mail and, where noted, by fax.

98 SEP 21 AIO:17

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

OFFICE OF GENERAL COUNSEL
RULEMAKING AND
ADJUDICATION STAFF

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

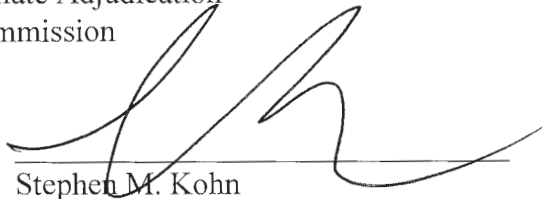
* Dr. Jerry R. Kline
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

* Thomas D. Murphy
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

* David Lewis
Shaw, Pittman, Potts & Trowbridge
2300 N Street, N.W., 3rd Floor
Washington, D.C. 20037

Office of the Secretary (2 copies)
Attn: Rulemakings and Adjudications Staff
U.S. NRC
Washington, D.C. 20555

Office of Commission Appellate Adjudication
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555



Stephen M. Kohn