

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

ATOMIC SAFETY AND LICENSING BOARD

'98 SEP 21 P1:08

Before Administrative Judges:

G. Paul Bollwerk, III, Chairman
Dr. Jerry R. Kline
Thomas D. Murphy

OFFICE
RULE
ADJUDICATOR

In the Matter of

BALTIMORE GAS AND ELECTRIC
COMPANY

(Calvert Cliffs Nuclear
Power Plant, Units 1 & 2)

Docket Nos. 50-317-LR
50-318-LR

ASLBP No. 98-749-01-LR

September 21, 1998

MEMORANDUM AND ORDER
(Scheduling Matters and
Electronic Hearing Database)

SERVED SEP 21 1998

In its September 17, 1998 memorandum and order, CLI-98-19, 48 NRC ____ (Sept. 17, 1998), the Commission provided that petitioner National Whistleblower Center (NWC) has up to and including Wednesday, September 30, 1998, within which to file any supplement to its August 7, 1998 intervention petition. The following day, NWC requested that the Board (1) delay any prehearing conference so that it might have "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"; or (2) in the alternative, provide a one-day extension of time to file its petition supplement because the September 30 date falls on a Jewish

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religious holiday observed by NWC counsel. Petitioner's Motion to Vacate Pre-Hearing Conference or in Alternative for an Extension of Time (Sept. 18, 1998) at 2.

Petitioner's motion indicates that applicant Baltimore Gas and Electric Company (BG&E) and the NRC staff have no objection to the filing extension but oppose its prehearing conference delay request.

We deny petitioner NWC's motion to delay the prehearing conference until after it has had an opportunity for discovery. The portion of the regulation discussed by NWC as authority for its request -- 10 C.F.R. § 2.752(a) -- is inapposite. Like 10 C.F.R. § 2.751a, it concerns a proceeding for an initial application for authority to construct or operate a reactor facility, which BG&E's license renewal application is not. Moreover, longstanding agency precedent precludes an intervenor from obtaining discovery to assist it in framing contentions. See Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 & 2), ALAB-107, 6 AEC 188, 192, reconsideration denied, ALAB-110, 6 AEC 247, aff'd, CLI-73-12, 6 AEC 241 (1973).

We grant the NWC extension request. Its intervention petition supplement shall be filed on or before Thursday, October 1, 1998. Further, in light of this ruling, applicant Baltimore Gas and Electric Company (BG&E) and the

NRC staff shall have up to and including Monday, November 2, 1998, within which to respond to any timely filed NWC intervention petition supplement.¹

Relative to the prehearing conference, with the change in filing dates for the NWC petition supplement and the applicant and staff responses, the Licensing Board now intends to hold a prehearing conference in this proceeding on either Monday and Tuesday, November 9-10, 1998, or Thursday and Friday, November 12-13, 1998, at the Atomic Safety and Licensing Board Panel Hearing Room, Room T-3B45, Third Floor, Two White Flint North Building, 11545 Rockville Pike, Rockville, Maryland. Any participant who has a potential scheduling conflict during either of these two periods should contact the Board Chairman immediately at (301) 415-7454.

Additionally, in its initial prehearing order, the Board requested that the participants provide it with an electronic copy of each participant filing before the Board or the Commission either as an e-mail attachment or by

¹ Under the revised filing schedule, intervenor NWC has 42 days from the time of the Board's August 20, 1998 initial prehearing order in which to file its intervention petition supplement, which must include its contentions. In order to comply with the Commission's admonition that this schedule change should not cause our initial decision to be postponed by more than "two weeks or so," CLI-98-17, 48 NRC at ____ (slip op. at 2), we afford BG&E and the staff a somewhat shorter period to respond to this filing. They are, of course, free to seek an extension of time.


regular mail on a 3.5 inch diskette. See Licensing Board Memorandum and Order (Initial Prehearing Order) (Aug. 20, 1998) at 11-12 (unpublished) [hereinafter Initial Prehearing Order]. Up to this point, the Board has not received an electronic version of any of the NWC filings. We ask that on or before Monday, September 28, 1998, NWC submit to the Board an electronic version of each of its already-filed Commission and Board pleadings and request again that an electronic copy of each future filing be provided to the Board contemporaneously with the submission of the document.

Finally, the NWC intervention petition supplement and the BG&E and staff responsive filings referenced in this issuance should be served on the Board, the Office of the Secretary, and counsel for the other participants by facsimile transmission, e-mail, or other means that will

ensure receipt by midnight ET on the day of filing. See
Initial Prehearing Order at 8.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD²



G. Paul Bollwerk, III
ADMINISTRATIVE JUDGE

Rockville, Maryland

September 21, 1998

² Copies of this memorandum and order were sent this date to counsel for applicant BG&E and petitioner NWC by Internet e-mail transmission; and to counsel for the staff by e-mail through the agency's wide area network system.

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(Calvert Cliffs Nuclear Power Plant,
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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB M&O (SCHEDULING MATTERS...) have been served upon the following persons by U.S. mail, first class, except as otherwise noted and in accordance with the requirements of 10 CFR Sec. 2.712.

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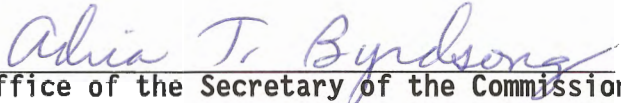
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Dated at Rockville, Md. this
21 day of September 1998


Office of the Secretary of the Commission