

October 1, 1998

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

'98 OCT -5 P2:31

In the Matter of )

Docket Nos. 50-317-LR  
50-318-LR  
(License Renewal)

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

ASLBP No. 98-749-01-LR

(Calvert Cliffs Unit 1 and  
Unit 2) )

**PETITIONER'S MOTION TO VACATE AND  
RE-SCHEDULE THE PRE-HEARING CONFERENCE**

Petitioner, the National Whistleblower Center (NWC), by and through counsel, hereby moves the Board to vacate and reschedule the pre-hearing conference that is scheduled to take place on November 12, 1998. *See*, Licensing Board Memorandum and Order (Sep. 29, 1998). Petitioner states that "good cause" exists to reschedule the November 12, 1998 pre-hearing conference. *See*, 10 C.F.R. § 2.711.

**BACKGROUND**

The current license for Baltimore Gas & Electric Company (BGE) to operate Calvert Cliffs Nuclear Power Plant (CNPP) Unit 1 expires on July 31, 2014, and the current license for CNPP Unit 2 expires on August 13, 2016. *See*, 63 Federal Register 39666 (July 8, 1998). On April 10, 1998 BGE filed an application pursuant to Section 104b of the Atomic Energy Act of 1954, as amended, and 10 C.F.R. Part 54 for 20-year renewal of its operating license for Calvert Cliffs Nuclear Power Plant Units 1 & 2.

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On July 8, 1998 the NRC staff published a notice of opportunity for a hearing regarding BGE's renewal application for CNPP Units 1 & 2. 63 Federal Register 36966 (July 8, 1998).

On August 7, 1998 NWC filed a petition to intervene and request for hearing concerning BGE's renewal application in accordance with 10 C.F.R. § 2.714. By order dated August 19, 1998 the Commission referred the NWC's petition and request for hearing to the Atomic Safety and Licensing Board (ASLB) panel and the Commission directed the Licensing Board "to conduct this proceeding in accordance with the guidance specified" by the Commission's order. *See*, CLI-98-14 (Aug. 19, 1998). By order dated August 20, 1998 the Board required NWC to file its amended and supplemental petition to intervene by September 11, 1998, and the Board stated its intent to hold a pre-hearing conference during the week of October 13, 1998.

On August 21, 1998 NWC requested the Board for an enlargement of time until December 1, 1998 in which to file its amended and supplemental petition containing its list of proposed contentions. On August 27, 1998 the Board issued an order denying NWC's request. On September 11, 1998 NWC did not file an amended or supplemental petition listing its contentions, but NWC filed with the Commission a petition for review of the Board's August 27, 1998 order. On September 17, 1998 the Commission granted in part NWC's petition for review and gave NWC until September 30, 1998 to file its amended and supplemental petition with a list of contentions. *See*, CLI-98-19 (Sep. 17, 1998).

On September 18, 1998 NWC requested that the Board delay the pre-hearing conference to provide for discovery prior to the filing of contentions, or, in the alternative, to provide a one-day extension of time to file its amended and supplemental petition because the September 30, 1998 deadline falls on a Jewish holiday. On September 21, 1998 the Board denied NWC's

request to delay the pre-hearing conference, but granted NWC's unopposed request for a one-day enlargement of the September 30, 1998 deadline established by the Commission's order dated September 17, 1998. *See*, Licensing Board Memorandum and Order (Sep. 21, 1998).

Significantly, the Licensing Board also *sua sponte* enlarged the schedule for the pre-hearing conference from the week of October 13, 1998 until the week of November 9, 1998. *Id.*, p. 3. In addition, the Licensing Board also *sua sponte* granted BGE and the NRC staff an extension of time in which to file their responses to NWC's intervention petition supplement. *Id.*, pp. 2-3. Notably, the Licensing Board gave BGE and the NRC staff until November 2, 1998, a total of 33 days, in which to prepare and file a response to NWC's supplemental petition. *Id.*<sup>1/</sup>

On September 25, 1998 NWC learned for the first time that the NRC staff had requested BGE to provide a significant amount of information concerning BGE's license renewal application. *See*, Exhibit 1, attached hereto, Letter and Request for Additional Information from NRC staff to BGE (Aug. 28, 1998). Notably, this letter was not publicly available in the NRC Public Document Room (PDR) until September 22, 1998. *Id.* Nor did either the NRC staff or BGE notify the Board or the parties about the NRC's RAI.

A review of the NRC staff's August 28, 1998 RAI demonstrates that a substantial portion of BGE's license renewal application requires clarification and supplementation in six generic areas. *Id.* Moreover, the August 28, 1998 RAI requests additional information to clarify BGE's response to a prior RAI dated February 19, 1998 regarding whether component replacements in the diesel fuel oil system are subject to an aging management review for license renewal. *Id.*

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<sup>1/</sup>This is a considerably larger period of time than that provided by the Code of Federal Regulations which permits the licensee 10 days and the NRC staff 15 days in which to file a response to the intervenor's supplemental petition. 10 C.F.R. § 2.714(c).

In response to NWC's inquiry on September 25, 1998, counsel for BGE stated that BGE will not submit its responses to the August 28, 1998 RAI until November 21, 1998 -- nine (9) days after the currently scheduled November 12, 1998 pre-hearing conference. *See*, Licensing Board Order (Sep. 29, 1998).

### **ARGUMENT**

It would be premature for the Licensing Board to hold its pre-hearing conference in this proceeding on November 12, 1998. As stated above, BGE has yet to file necessary technical information in support of its renewal application and BGE does not plan to file its response to the NRC staff's August 28, 1998 RAI (*see*, Exhibit 1) until November 21, 1998 -- nine (9) days after the scheduled pre-hearing conference. Unfortunately, neither BGE nor the NRC staff notified the Board or the parties to this proceeding about the RAI prior to the time the Board issued any of its scheduling orders.<sup>2/</sup> When this Board issued its pre-hearing schedule it was presumed that the renewal application was complete. However, according to the RAI it was not complete in significant respects and unbeknownst to the Board the NRC staff had requested BGE to supplement the renewal application in significant respects.

NWC's request that the pre-hearing conference, currently scheduled for November 12, 1998, be rescheduled is reasonable considering that BGE needs in excess of 100 days in order to respond to the NRC staff's RAI dated August 28, 1998. BGE's need for more than 100 days to respond to the RAI reflects the complexity of the issues involved with BGE's renewal

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<sup>2/</sup>BGE and the NRC staff should be ordered to disclose whether there are other RAI's, or other significant outstanding issues, related to the renewal application at issue and they should be ordered to report significant developments such as the RAI to the Board and serve all relevant correspondence, reports and papers related to the renewal application on the Board and the parties to this proceeding, including the NWC.

application. If BGE, which employs engineers and scientists on a full-time basis, cannot respond for more than 100 days, it will take NWC at least that long to study BGE's response to the RAI and evaluate its impact on the renewal application and the potential contentions in this proceeding.

In scheduling a pre-hearing conference the needs of the parties and the complexity of the matters that are the subject of the proceedings should be considered. Holding a pre-hearing conference before BGE supplements its renewal application in response to the RAI would cause the Board, the NRC staff and the intervenor to unnecessarily expend resources, particularly in light of the regulatory scheme establishing the timing of submitting contentions 15 days in advance of the first pre-hearing conference. BGE's supplement to the renewal application in response to the RAI will significantly impact the NWC's supplement and amendment to its petition as well as its list of contentions. The parties should not be required to litigate over NWC's proposed contentions or attend pre-hearing conferences that are intended to frame the issues in the case until BGE discloses all of the information necessary to support its renewal application. At the very least, BGE should be required to file and serve its response to the RAI before NWC is required to submit its list of contentions and before this Board holds a pre-hearing conference to define the issues in the case. However, due to the deficiencies in BGE's renewal application BGE will not even be prepared to submit its response to the RAI until after the November 12, 1998 pre-hearing conference. This is highly prejudicial to NWC.

Shortly after this proceeding commenced NWC notified the Board that given the complexity of the issues related to BGE's renewal application that it would be premature to hold a pre-hearing conference until at least sometime in December, 1998. Considering that BGE will

not even file a complete renewal application in response to the RAI until November 21, 1998, NWC's original estimate on the time needed to file contentions and scheduling the pre-hearing conference was too optimistic. Due to BGE's failure to file a complete renewal application and because BGE will not file an important and necessary supplement to its renewal application, and given the highly complex and technical nature of this proceeding, the pre-hearing conference should be postponed until no sooner than 115 days after BGE submits its response to the RAI.

As a matter of law, NWC may file its amended and supplemental petition or set forth its list of contentions without leave up to 15 days prior to the first pre-hearing conference. *See*, 10 C.F.R. § 2.714; 63 Federal Register 36966-36967 (July 8, 1998). Under the current pre-hearing schedule and in accordance with the governing regulations, NWC's amended and supplemental petition and its list of contentions is not due until October 28, 1998. NWC has made substantial progress towards developing a list of contentions. *See*, NWC Status Report (Oct. 1, 1998). NWC has retained and consulted with a number of highly experienced and well-qualified technical experts regarding the complex issues raised by BGE's 20-year renewal application. *Id.* Even prior to NWC's discovery of the August 28, 1998 RAI, some of the experts consulted by NWC raised the same kind of questions as stated in the NRC staff's RAI about the lack of supporting information in the BGE renewal application. NWC's experts need to review the RAI before they can render opinions upon which NWC intends to rely in formulating its list of contentions in this matter.

The Commission's and the Board's failure to strictly adhere to the rules of practice and procedure, as published in 10 C.F.R. Part 2, in setting deadlines in this proceeding is a violation of law. In this regard, the administrative anarchy created by this failure is also highly prejudicial

to the NWC and the public interest. For example, prior rulings forcing the NWC to file a petition for review to the Commission just to have this Board adhere to non-discretionary scheduling requirements and deadlines set forth in the Federal Register notice and the Code of Federal Regulations is oppressive, disruptive to NWC's efforts to formulate a list of contentions and results in delay and expense. Additionally, this Board has prejudicially applied procedural rules to favor BGE and the NRC staff over the NWC. For example, neither BGE nor NRC staff were required to meet the heightened standard for enlargement of time requests adopted for this proceeding by the Commission and the Board; however, petitioner's reasonable requests for enlargement of time were denied pursuant to this unique standard. The Board's most recent *sua sponte* granting of an unrequested enlargement of time for BGE and NRC staff to respond to NWC's amended and supplemental petition and list of contentions enlarges the time for filing such responses from 10 and 15 days, respectively, to more than 30 days in which to file responses. At the same time, NWC's time for filing its amended and supplemental petition and its list of contentions is severely shortened by 27 days, from 15 days prior to the pre-hearing conference as mandated by the regulations to 42 days in advance of the pre-hearing conference. The Board's scheduling is both a violation of the controlling law governing scheduling and highly prejudicial to petitioner. Undoubtedly, one of the reasons that the regulatory scheme for licensing proceedings deliberately affords petitioners more time to develop contentions in comparison with a shorter response time for licensees and NRC staff is because the licensee and staff are already familiar with the highly technical and complex issues related to the application well in advance of the commencement of a formal licensing proceeding. In this case, BGE took several years to study the issues to develop its renewal application and BGE was in active

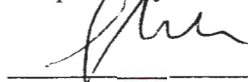
consultation with the NRC staff about renewal application issues prior to its formal submission. The shortening of the time permitted by the regulations for NWC to submit contentions and the enlargement of BGE's and NRC staff's response time is unfair to NWC, harms the public interest and violates the principles behind the rules of practice.

Neither BGE nor the NRC staff will be prejudiced if this request is granted. BGE is responsible for the delay due its failure to submit a complete renewal application and its failure to provide a more timely response to the August 28, 1998 RAI. Moreover, the current licenses for CNPP Units 1 & 2 do not expire until the years 2014 and 2016, respectively. Consequently, there is more than sufficient time to address the issues involved with BGE's request to renew its license. The inherent risk to the public health and safety as a result of a 20-year extension of a license to operate a nuclear power plant far outweighs the industry's and BGE's desire to "expedite" licensing renewal process. The Commission and the Board should take particular care to ensure that public safety is not devoured by the process.

#### 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 no sooner than 115 days after BGE submits its response to the August 28, 1998 RAI.

Respectfully submitted,



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Attorneys for Petitioner National Whistleblower Center

October 1, 1998

August 28, 1998

Mr. Charles H. Cruse, Vice President  
Nuclear Energy Division  
Baltimore Gas and Electric Company  
1650 Calvert Cliffs Parkway  
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SUBJECT: REQUEST FOR ADDITIONAL INFORMATION FOR THE REVIEW OF THE  
CALVERT CLIFFS NUCLEAR POWER PLANT, UNIT NOS. 1 & 2, INTEGRATED  
PLANT ASSESSMENT REPORT (TAC NO. MA2156)

Dear Mr. Cruse:

By letter dated April 8, 1997, Baltimore Gas and Electric (BGE) submitted its license renewal application. The staff is reviewing the integrated plant assessment reports contained in the application against the requirements of 10 CFR 54.21(a)(1) and 10 CFR 54.21(a)(3). Based on a review of the information submitted, the staff has identified in the enclosure, generic areas where additional information is needed to complete its review.

Please provide a schedule by letter or telephonically for the submittal of your responses within 30 days of the receipt of this letter. Additionally, the staff would be willing to meet with BGE prior to the submittal of the responses to provide clarifications of the staff's requests for additional information.

Sincerely,

Original Signed By

David L. Solorio, Project Manager  
License Renewal Project Directorate  
Division of Reactor Program Management  
Office of Nuclear Reactor Regulation

Nov 21  
Dave L. Solorio

Docket Nos. 50-317 and 50-318

Enclosure: Request for Additional Information

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- Exhibit 1 -

Mr. Charles H. Cruse  
Baltimore Gas & Electric Company

Calvert Cliffs Nuclear Power Plant  
Unit Nos. 1 and 2

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REQUEST FOR ADDITIONAL INFORMATION  
CALVERT CLIFFS NUCLEAR POWER PLANT UNIT NOS. 1 & 2  
LICENSE RENEWAL APPLICATION  
DOCKET NOS. 50-317 AND 50-318

Generic Requests for Information

1. The BGE application contains aging management review of valve internals, such as disk, seat, and pivot rod. However, 10 CFR 54.21(a)(1)(I) excludes valves, other than the valve body, from the aging management review requirements. The statements of consideration (SOC) of the license renewal rule provides the basis for excluding structures and components that perform their intended functions with moving parts or with a change in configuration or properties from an aging management review for license renewal. It states: "On the basis of consideration of the effectiveness of existing programs which monitor the performance and condition of systems, structures, and components that perform active functions, the Commission concludes that structures and components associated only with active functions can be generically excluded from a license renewal aging management review. Functional degradation resulting from the effects of aging on active functions is more readily determinable, and existing programs and requirements are expected to directly detect the effects of aging." (60 FR 22471) The SOC contains an example of the valve internals. It states: "The Commission has determined that passive structures and components for which aging degradation is not readily monitored are those that perform an intended function without moving parts or without a change in configuration or properties. For example, a ... valve has moving parts, ... Therefore, the performance or condition of these components is readily monitored and would not be captured by this description." (60 FR 22477) Further, in response to a public comment regarding rarely operated valves, the SOC states: "The Commission disagrees with the commenter's assertion that there is insufficient evidence that the active functions will be maintained in the renewal period. Such valves are within the scope of various regulatory programs, including the maintenance rule. Consequently, the ability of the valves to perform their intended function must be assured through either (1) effective preventive maintenance or (2) performance or condition monitoring." (60 FR 22472) In addition, the industry guideline developed by the Nuclear Energy Institute (NEI) in NEI 95-10, Revision 0, "Industry Guideline for Implementing the Requirements of 10 CFR Part 54 - The License Renewal Rule," which the staff has proposed to endorse in a draft regulatory guide, indicates that only valve bodies are subject to an aging management review for license renewal.

Please provide basis of BGE's determination that valve internals are subject to an aging management review for license renewal.

2. The BGE application contains a statement to indicate that component replacements are not subject to an aging management review for license renewal. By letter dated February 19, 1998, the staff issued a request for additional information (RAI) on the

Enclosure

diesel fuel oil system described in the application. In Question 6 of the RAI, the staff requested information regarding component replacements in the diesel fuel oil system. Your July 30, 1998, response indicates that the BGE statement is meant to be generic and accounts for a future hypothetical scenario. No components were excluded from an aging management review based on the hypothetical scenario. Because this statement appears throughout the BGE application, please verify that your response to Question 6 of the diesel fuel oil system RAI is applicable to the entire BGE application.

3. The BGE application relies, in part, on "Age-Related Degradation Inspection (ARDI)" programs to manage the effects of aging for license renewal. The application also relies, in part, on new programs to manage the effects of aging for license renewal. Please discuss the differences between ARDI and new programs.
4. The BGE application relies, in part, on ARDI programs to manage the effects of aging for license renewal. For each of these ARDI programs, please provide a reference to the section of the application, supplemented as needed, that describes a summary that addresses the elements listed below. The summary should include a discussion of the bases for each of these elements. (1) Parameters to be monitored or inspected relative to degradation of specific structure and component intended functions; (2) Assurance that detection of aging effects will occur before loss of structure and component intended functions; (3) Program inspection, technique, inspection schedule, and sample size to ensure structure and component intended functions; (4) Acceptance criteria to ensure structures and components can perform their intended functions; and (5) Operating experience from similar programs or inspection techniques used by BGE or the industry. Also discuss the schedule for implementation of each of these ARDI programs.

For programs that are yet to be developed, please provide information on those elements that are available. For the remaining elements, please provide the detailed process, including the basis, that BGE will use to develop them and a schedule for when the program development will be completed.

5. The BGE application relies, in part, on new programs to manage the effects of aging for license renewal. For each of these new programs, please provide a reference to the section of the application, supplemented as needed, that describes a summary that addresses the elements listed below. The summary should include a discussion of the bases for each of these elements. (1) Scope of program that includes the specific structures and components subject to an aging management review; (2) Preventive actions that will be used to mitigate or prevent aging degradation; (3) Parameters to be monitored or inspected relative to degradation of specific structure and component intended functions; (4) Assurance that detection of aging effects will occur before loss of structure and component intended functions; (5) Program monitoring, trending, inspection, technique, testing frequency, and sample size to ensure structure and component intended functions; (6) Acceptance criteria to ensure structures and components can perform their intended functions; and (7) Operating experience from similar programs or inspection techniques used by BGE or the industry. Also discuss the schedule for implementation of each of these new programs.

For programs that are yet to be developed, please provide information on those elements that are available. For the remaining elements, please provide the detailed process, including the basis, that BGE will use to develop them and a schedule for when the program development will be completed.

6. Section 2.0, "Integrated Plant Assessment Methodology," of Appendix A to the BGE application indicates that the purpose of an ARDI is either to support a "non-plausible" aging mechanism determination or to confirm that a mitigation program is effective. The ARDI is a one-time inspection which may be performed prior to or during the period of extended operation. The staff is requesting additional information to clarify the purpose of an ARDI program and when an ARDI is used as discussed below.

Section 5.16, "Saltwater System," of Appendix A to the application indicates that there is an ARDI program to manage the effects of corrosion of certain saltwater system group 1 components. These components are unlined piping, valves, etc., and BGE has determined that corrosion is "plausible." BGE also identified that there is no program to mitigate corrosion for these components. Then, BGE proposed to develop an ARDI program. Based upon operating experience, corrosion of saltwater system components may be likely. Thus, the staff believes a periodic inspection program may be more appropriate than a one-time inspection at a future unspecified time. In addition, the selection of an ARDI for this case may not be consistent with the purpose of the ARDI. Please clarify why an ARDI is appropriate for these saltwater system components. There are other similar examples, such as managing stress relaxation and stress corrosion cracking of reactor vessels internals (Section 4.3). Please provide criteria for determining when an ARDI versus a new program is selected for aging management for license renewal.

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