

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
)	
TENNESSEE VALLEY AUTHORITY)	Docket Nos. 50-327 and 50-328
)	Docket No. 50-390
(Sequoyah Nuclear Plant, Units 1 and 2))	(Consolidated)
)	
(Watts Bar Nuclear Plant, Unit 1))	

NRC STAFF'S ANSWER TO CONTENTIONS FILED BY
MS. JEANNINE HONICKER

INTRODUCTION

The staff of the Nuclear Regulatory Commission (Staff) hereby submits its answer to the contentions filed by Ms. Jeannine Honicker.¹ For the reasons set forth below, the Staff submits that Ms. Honicker has failed to file any admissible contentions under the standards for admission of contentions in 10 C.F.R. § 2.714(b) with respect to either of the relevant nuclear facilities discussed herein.

BACKGROUND

Tennessee Valley Authority (TVA) is the licensee for the Sequoyah Nuclear Plant, Units 1 and 2 (Sequoyah), and the Watts Bar Nuclear Plant, Unit 1 (Watts Bar). By applications dated August 20, 2001 (for WB)², and September 21, 2001 (for Sequoyah)³, TVA requested license

¹Contentions of Jeannine Honicker (Mar. 7, 2002) (Contentions).

²TVA-WBN-TS-00-015, Watts Bar Nuclear Plant (WBN) - Unit 1 - Revision of Boron Concentration Limits and Reactor Core Limitations for Tritium Production Cores (TPCs) - Technical Specification (TS) Change No. TVA-WBN-TS (Aug. 20, 2001) (WB Application).

³TVA-SQN-TS-00-06, Sequoyah Nuclear Plant (SQN) - Units 1 and 2 - Revision of
(continued...)

amendments that would allow TVA to insert up to a certain number of tritium producing burnable absorber rods (TPBARs), which contain no fissile material, into the reactor cores. The proposed amendments are related to an agreement between TVA and the U.S. Department of Energy (DOE) under which TVA will provide certain irradiation services to DOE. DOE plans to transport the irradiated TPBARs to its Savannah River site in South Carolina for defense purposes, but the transportation activities by DOE are not the responsibility of TVA and are not the subject of the pending amendment requests. On December 17, 2001, the Staff published in the *Federal Register* two separate notices of the amendment requests and of an opportunity for a hearing. 66 Fed. Reg. 65,000 (2001) and 66 Fed. Reg. 65,005 (2001). Pursuant to the notices, Ms. Honicker filed hearing requests and petitions for leave to intervene with respect to both facilities. By an order dated January 28, 2002, issued by the Chief Administrative Judge, the two proceedings were consolidated. Subsequently, Ms. Honicker amended her request and petition in accordance with the Memorandum and Order (Feb. 7, 2002) issued by the Atomic Safety and Licensing Board (Board), and has now filed her contentions.⁴

DISCUSSION

I. Legal Standards for the Admission of Contentions

To gain admission to a proceeding as a party, a petitioner for intervention, in addition to establishing standing and raising an aspect within the scope of the proceeding, must submit at

³(...continued)

Instrumentation Measurement Range, Boron Concentration Limits, Reactor Core Limitations and Spent Fuel Pool Storage Requirements for Tritium Production Cores (TPCs) - Technical Specification (TS) Change No. 00-06 (Sept. 21, 2001) (Sequoyah Application).

⁴ By a Memorandum and Order dated February 7, 2002, the Atomic Safety and Licensing Board (Board) in this proceeding set a due date of March 7, 2002 for the submission of contentions. On page 5 of its Memorandum and Order, the Board specified that any attachments or exhibits to contentions that could not be transmitted by e-mail be transmitted by facsimile or other means to ensure receipt by the due date. Ms. Honicker filed her contentions by e-mail without attachments on March 7, 2002. Eleven days later, the Staff received a hard copy of her contentions with attachments via regular mail.

least one valid contention that meets the requirements of 10 C.F.R. § 2.714(b). *Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2, and 3), CLI-99-11, 49 NRC 328, 333 (1999); *Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), CLI-96-7, 43 NRC 235, 248 (1996). For a contention to be admitted, it must meet the standards set forth in 10 C.F.R. § 2.714(b)(2), which provides that each contention must consist of "a specific statement of the issue of law or fact to be raised or controverted" and must be accompanied by:

- (i) A brief explanation of the bases of the contention;
- (ii) A concise statement of the alleged facts or expert opinion which supports the contention . . . together with references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion;
- (iii) Sufficient information (which may include information pursuant to paragraphs (b)(2) (i) and (ii) of this section) to show that a genuine dispute exists with the applicant on a material issue of law or fact. This showing must include references to the specific portions of the application (including the applicant's environmental report and safety report) that the petitioner disputes and the supporting reasons for each dispute, or, if the petitioner believes that the application fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the petitioner's belief. On issues arising under the National Environmental Policy Act, the petitioner shall file contentions based on the applicant's environmental report. The petitioner can amend those contentions if there are data or conclusions in the NRC draft or final environmental impact statement, environmental assessment, or any supplements relating thereto, that differ significantly from the data or conclusions in the applicant's document.

10 C.F.R. § 2.714(b)(2). The failure of a contention to comply with any one of these requirements is grounds for dismissing the contention. 10 C.F.R. § 2.714(d)(2)(i); *Arizona Public Service Co.* (Palo Verde Nuclear Generating Station, Units 1, 2, and 3), CLI-91-12, 34 NRC 149, 155-56 (1991); see Rules of Practice for Domestic Licensing Proceedings -- Procedural Changes in the Hearing Process, 54 Fed. Reg. 33,168 (1989). A contention must also be dismissed where the "contention,

if proven, would be of no consequence . . . because it would not entitle [the] petitioner to relief.”

10 C.F.R. § 2.714(d)(2)(ii).

Pursuant to section 2.714(b)(2), a petitioner must provide a “clear statement as to the basis for the contentions and the submission of . . . supporting information and references to specific documents and sources that establish the validity of the contention.” *Palo Verde*, CLI-91-12, 34 NRC at 155-56. The purpose of the basis requirement of section 2.714(b)(2) is (1) to assure that at the pleading stage the hearing process is not improperly invoked, (2) to assure that the contention raises a matter appropriate for adjudication in a particular proceeding; and (3) to put other parties sufficiently on notice of the issues so that they will know generally what they will have to defend or oppose. *Philadelphia Electric Co. (Peach Bottom Atomic Power Station, Units 2 and 3)*, ALAB-216, 8 AEC 13, 20-21 (1974). Further, the petitioner has the obligation to formulate the contention and provide the information necessary to satisfy the basis requirement of 10 C.F.R. § 2.714(b)(2). *Florida Power & Light (Turkey Point Nuclear Generating Plant, Units 3 and 4)*, CLI-00-23, 52 NRC 327, 329 (2000); see also *Statement of Policy on Conduct of Adjudicatory Proceedings*, CLI-98-12, 48 NRC 18, 22 (1998).

Moreover, Licensing Boards are delegates of the Commission and, as such, they may “exercise only those powers which the Commission has given [them].” *Public Service Co. of Indiana (Marble Hill Nuclear Generating Station, Units 1 and 2)*, ALAB-316, 3 NRC 167, 170 (1976). It is well established under Commission precedent that a contention is not cognizable unless it is material to a matter that falls within the scope of the proceeding for which the Licensing Board has been delegated jurisdiction as set forth in the Commission’s Notice of Opportunity for Hearing. *Marble Hill*, ALAB-316, 3 NRC at 170-71; see also *Commonwealth Edison Co. (Zion Station, Units 1 and 2)*, ALAB-616, 12 NRC 419, 426 (1980).

II. Analysis of Proffered Contentions

Contention 1

TVA has not adequately considered the adverse health effects of the large releases of tritium that would occur if the subject license amendments are granted.

As a basis for this contention, Ms. Honicker cites to several studies, reports, and articles describing the adverse health effects of tritium effluents on humans. Contentions at 2-4. According to Ms. Honicker, these sources generally link tritium effluents and tritium exposure to increased incidences of birth defects, infant mortality, and cancer. *Id.* She argues that “TVA only used computer models to calculate the risks of tritium releases to individuals and the public, ignoring actual studies that show extremely adverse health effects.” *Id.* at 2. Ms. Honicker lists Dr. Ernest Sternglass as an expert witness who will testify regarding her contention. *Id.* at 4; see *also id.* Attachment 1 (Curriculum Vita[e] of Ernest Sternglass).

Staff's Response

Ms. Honicker has not provided a sufficient basis for her contention. While she does cite to several studies describing the adverse health effects of exposure to presumably large quantities of tritium, Ms. Honicker does not append these materials to her contentions so that the Staff may determine their relevance. Ms. Honicker does not refer to any portion of TVA's applications or attempt to show how the studies she cites apply to the site-specific conditions considered in TVA's applications. Mere reference to these studies does not provide an adequate basis for her contention. See *Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), CLI-89-3, 29 NRC 234, 240-41 (1989); *Commonwealth Edison Co.* (Braidwood Nuclear Power Station, Units 1 and 2), LBP-85-20, 21 NRC 1732, 1741 (1985) (requiring intervenor to identify, summarize, and append specific portions of documents relied upon in support of contentions), *rev'd and remanded on other grounds*, CLI-86-8, 23 NRC 241 (1986). Because her contention lacks adequate specificity and a basis, Ms. Honicker has failed to demonstrate a genuine dispute with TVA

regarding any material issue of law or fact and her contention should be dismissed. 10 C.F.R. § 2.714(b)(2).

The only argument Ms. Honicker offers in support of her contention is that “TVA only used computer models to calculate the risks of tritium releases to individuals and the public, ignoring actual studies that show extremely adverse health effects.” Contentions at 2. However, the Commission’s regulations and guidance specifically allow licensees to use computer modeling to calculate the doses expected to result from implementation of a given amendment. For example, 10 C.F.R. § 20.1302 allows licensees to show that operations will not threaten the health and safety of individuals in unrestricted areas by demonstrating “by measurement *or calculation* that the total effective dose equivalent to the individual likely to receive the highest dose does not exceed the annual dose limit” contained in § 20.1301. 10 C.F.R. § 20.1302(b)(1) (emphasis added). Similarly, Appendix I to 10 C.F.R. Part 50 notes that conformity with the criteria therein can be demonstrated through the use of models. 10 C.F.R. Part 50, Appendix I, Sec. III.A.1. Neither Part 50 Appendix I nor section 20.1302 require TVA to consider actual case studies when determining the risk of radiation exposure to individual members of the public. See *id.*; 10 C.F.R. § 20.1302.

Ms. Honicker references no sources, documents, or expert testimony attacking the modeling used by TVA to calculate doses to individual members of the public caused by irradiation of TPBARs at Sequoyah and Watts Bar. To the extent Ms. Honicker is alleging that computer modeling is a *per se* inadequate means of determining the risk of radiation exposure, her contention constitutes an impermissible attack on the regulations and should be dismissed. See 10 C.F.R. § 2.758; *North Atlantic Energy Service Corp.* (Seabrook Station, Unit 1), CLI-99-6, 49 NRC 201, 217 n.8, 220-221 (1999). To the extent she is alleging that the doses calculated by TVA will have extremely adverse health effects on individuals, Ms. Honicker is seeking to impose

requirements upon TVA that are more restrictive than the Commission's regulations.⁵ Her contention therefore constitutes an impermissible attack on the regulations and should be dismissed. *Id.*

Contention 2

TVA has not adequately calculated the amount of tritium that will be released into the Tennessee River, should the subject license amendments be granted.

As a basis for this contention, Ms. Honicker cites to a document containing questions and comments by members of the public attending an October 2, 2001 joint public meeting held by NRC, DOE, and TVA. Contentions at 4, Attachment 2. According to Ms. Honicker, the document also contains responses to public comments by TVA staff.⁶ *Id.* Using information in that document, she calculates that 176,032 curies of tritium will be released from the irradiation of the 2034 tritium producing burnable absorber rods (TPBARs) proposed to be used at Sequoyah and Watts Bar under the license amendments. *Id.* at 5-6.

Staff's Response

Ms. Honicker fails to cite any specific portion of TVA's applications that give rise to her contention. She never references the results of TVA's calculations regarding tritium effluent levels or provides any basis for why they are inadequate. These omissions alone are grounds for dismissal of her contention. See 10 C.F.R. § 2.714(b)(2).

Instead of attacking the accuracy of TVA's calculations regarding tritium releases, Ms. Honicker simply provides a calculation of her own designed to show an aggregate increase in the amounts of tritium that will be released from Sequoyah and Watts Bar should the subject

⁵TVA states in its applications that the doses to individuals resulting from its proposed irradiation of TPBARs will not exceed the limits imposed by 10 C.F.R. §§ 20.1301 and 50.36a. See WB Application, Enclosure 4 at 2-32, 2-35; Sequoyah Application, Enclosure 4 at 2-25, 2-26.

⁶The document itself, labeled Attachment 2 in Ms. Honicker's contentions, does not attribute the responses to any specific organization.

license amendments be granted. TVA acknowledges in its applications that increased amounts of tritium will in fact be released should the subject license amendments be approved; however, as discussed in the Staff's Response to Contention 1, TVA has stated that this increase is permissible under the dose-based effluent limits of 10 C.F.R. Parts 20 and 50. See WB Application, Enclosure 4 at 2-32, 2-35; Sequoyah Application, Enclosure 4 at 2-25, 2-26; 10 C.F.R. §§ 20.1301, 50.36a. Ms. Honicker's contention therefore fails to demonstrate a genuine dispute of material fact with TVA and should be dismissed. 10 C.F.R. § 2.714(b)(2).

Contention 3

The synergistic effects of existing contamination in the Tennessee River and the increased tritium emissions have not been considered, and under 10 C.F.R. § 50.59 this represents an unresolved safety problem.

In support of this contention, Ms. Honicker relies on the expert testimony and several letters of C.S. Sanford, a former Environmental Engineer with the State of Tennessee to show consistent violations of the Clean Water Act and the Safe Drinking Water Act in the "region of interest."⁷ Contentions at 7-8; see also Contentions Attachment 3 (Résumé of C.S. Sanford). She also refers to various administrative materials from state and federal agencies, including records of non-compliance and notices of violation.⁸ *Id.* at 7.

Staff's Response

Ms. Honicker provides no explanation of what the "synergistic effects" she refers to are. Ms. Honicker does not offer any facts, sources, or experts who will testify regarding any "synergistic

⁷Ms. Honicker has failed to include these letters in any attachment or exhibit to her contentions. It is therefore unclear what specific matters these documents address or how they are relevant to this proceeding. Mere reference to these documents does not make them a basis for her contention. See *Seabrook*, CLI-89-3, 29 NRC at 240-41.

⁸ Ms. Honicker has failed to include any of these administrative materials in the attachments and exhibits to her contentions. It is therefore unclear what specific matters these documents address or how they are relevant to this proceeding. Mere reference to these documents does not make them a basis for her contention. See *Seabrook*, CLI-89-3, 29 NRC at 240-41.

effects” of tritium and existing contamination in the Tennessee River. She fails to refer to any specific portion of TVA’s applications that she considers deficient. Her contention therefore lacks adequate specificity and a basis and should be dismissed. 10 C.F.R. § 2.714(b)(2).

To the extent Ms. Honicker seeks to present expert testimony regarding alleged violations of the Clean Water Act and the Safe Drinking Water Act for purposes of seeking enforcement action under those statutes, Ms. Honicker’s contention is outside the scope of this license amendment proceeding. The Commission is without regulatory authority to compel action or impose any requirements under those statutes. See *Tennessee Valley Authority (Yellow Creek Nuclear Plant, Units 1 and 2)*, ALAB-515, 8 NRC 702, 712-713 (1978). Because the Commission would be unable to grant Ms. Honicker any relief even if her contention was accepted, the contention should be dismissed. 10 C.F.R. § 2.714(b)(2)(ii).

Contention 4

The production of tritium at Watts Bar and/or Sequoyah is illegal.

As a basis for this contention, Ms. Honicker states, “The Atomic Energy Act of 1954 prohibits the production of material for nuclear weapons at Commercial nuclear power plants.” Contentions at 8.

Staff’s Response

Ms. Honicker cites no specific statutory provision of the Atomic Energy Act of 1954, as amended, (AEA) in support of her contention, and the AEA contains no explicit statutory prohibition on the production of tritium at NRC-licensed facilities. Furthermore, on October 5, 1999, Congress enacted the National Defense Authorization Act for Fiscal Year 2000, Pub. L. No. 106-65, 113 Stat. 512 (Authorization Act), which expressly authorizes the production of tritium at Watts Bar and Sequoyah. Section 3134 of the Authorization Act, Procedures for Meeting New Tritium Production Requirements, provides:

(a) PRODUCTION OF NEW TRITIUM.--The Secretary of Energy shall produce new tritium to meet the requirements of the Nuclear Weapons Stockpile Memorandum at the Tennessee Valley Authority Watts Bar or Sequoyah nuclear power plants consistent with the Secretary's December 22, 1998, decision document designating the Secretary's preferred tritium production technology.

Because the Authorization Act expressly authorizes the production of tritium at Watts Bar and Sequoyah, Ms. Honicker's contention is without any legal basis and should be dismissed.

10 C.F.R. § 2.714(b)(2).

Contention 5

Granting TVA's license amendment applications for the production of tritium to replenish the hydrogen in the U.S. nuclear arsenal would be a threat to National Defense.

As a basis for this contention, Ms. Honicker references a letter from Rep. Edward Markey (D-Mass.) to Energy Secretary Spencer Abraham.⁹ Contentions at 9. According to Ms. Honicker, Congressman Markey's letter notes that production of new tritium would send the wrong message to the world and increase the potential for proliferation. *Id.* Ms. Honicker states that the license amendments at issue, if granted, will undercut the President's negotiation with the Russians to reduce their nuclear stockpile. *Id.* Finally, Ms. Honicker argues that "there are better alternatives" to producing tritium in commercial nuclear power plants, including the production of tritium on DOE reservations. *Id.* at 9-10.

Staff's Response

Ms. Honicker has failed to provide an adequate factual basis in support of her contention. Her reference to Congressman Markey's letter simply provides an opinion that granting the subject license amendments is unwise. Her arguments that tritium production will increase the threat of nuclear proliferation and undercut the President's negotiations with Russia to reduce their nuclear

⁹Ms. Honicker did not attach a copy of Congressman Markey's letter to her contentions. Mere reference to this letter does not establish it as a basis for her contention. See *Seabrook*, 29 NRC at 240-41.

stockpile are not backed by any factual data or expert testimony. Ms. Honicker's contention presents policy questions regarding national defense needs that NRC has no legal authority to address and that are beyond the limited scope of this proceeding. Her contention therefore fails to meet the requirements of 10 C.F.R. § 2.714(b)(2) and should be dismissed.

Contention 6

This hearing is untimely because there are no TVA or NRC Environmental Impact Statements, as required by NEPA, upon which to base contentions.

As a basis for this contention, Ms. Honicker relies primarily on the National Environmental Policy Act of 1969 (NEPA). She argues that by reviewing TVA's license amendment application for the production of tritium at Watts Bar and Sequoyah, NRC has undertaken a significant federal action and must therefore prepare an environmental impact statement (EIS) under NEPA before any hearing goes forward. Contentions at 10-11. Ms. Honicker further argues that the public cannot formulate meaningful contentions until after the EIS is issued, and therefore, the Commission should reopen the intervention period to the public and allow submission of contentions after those documents are issued. *Id.* at 11.

Staff's Response

Under NEPA, federal agencies are required to prepare an EIS for every major federal action significantly affecting the quality of the human environment. NEPA § 102(C); see 10 C.F.R. § 1.20(a)(1). However, the mere submission of TVA's license amendment applications does not require the Staff to prepare an EIS. Rather, the Staff may consider the applications to determine whether to apply a categorical exclusion under 10 C.F.R. § 51.22(c) or prepare an environmental assessment under 10 C.F.R. § 51.30. See 10 C.F.R. § 51.21. Ms. Honicker's contention seeking an EIS at this stage is therefore premature, and should be dismissed. See *Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Plant, Units 1 and 2), LBP-93-1, 37 NRC 5, 36 (1993).

Ms. Honicker's contention that TVA has not prepared an EIS regarding the subject license amendments is incorrect. In March 1999, DOE published DOE/EIS-0288, Final Environmental Impact Statement (EIS) for the Production of Tritium in a Commercial Light Water Reactor, which assessed the environmental impacts of producing tritium in TVA's Watts Bar and Sequoyah reactors. TVA was a cooperating agency in the preparation of DOE/EIS-0288. WB Application, Enclosure 1 at E1-33; Sequoyah Application, Enclosure 1 at E1-37. In accordance with 40 C.F.R. § 1506.3(c) of the Council on Environmental Quality regulations, TVA independently reviewed the EIS prepared by DOE, found it to be adequate, and adopted it. *Id.*; see TVA Record of Decision and Adoption of the Final Environmental Impact Statement for the Production of Tritium in a Commercial Light Water Reactor, 65 Fed. Reg. 26,259 (2000). TVA has stated in its applications that there have been no substantial changes in its proposal to produce tritium at Watts Bar and Sequoyah since the publication of the DOE/EIS-0288 such that further environmental review is warranted. See WB Application, Enclosure 1 at E1-33; Sequoyah Application, Enclosure 1 at E1-37. Ms. Honicker has not offered any facts or expert opinion to the contrary, nor has she in any way challenged the contents of DOE/EIS-0288. She has therefore failed to demonstrate a genuine dispute of material fact with TVA, and her contention should be dismissed. 10 C.F.R. § 2.714(b)(iii).

Ms. Honicker also argues that these proceedings are untimely and that the Commission should reopen the time period for intervention and submission of contentions until "TVA and NRC . . . make their Environmental Reports and/or Environmental Impact Statements, and Final Safety Analysis reports available to the public . . ." Contentions at 11. As noted above, TVA has already completed and submitted its EIS, and the Staff is not required to prepare an EIS at this stage of the proceeding. TVA's final safety analysis report was long ago filed with NRC and is periodically updated. Because Ms. Honicker provides no showing of good cause to justify her request to extend the time period for intervention and filing of contentions, the request should be denied and

her contention dismissed. See 10 C.F.R. § 2.714(a)(1), (b)(1).

Contention 7

The possibility of accidents involving the production of tritium at the Watts Bar Nuclear Plant cannot be known because of the questionable quality of construction of the plant. Therefore, the NRC's proposed finding of "No Significant Hazards" is in error, and the proposed license amendment must be denied.

As bases for this contention, Ms. Honicker refers to several inspection reports and letters from both NRC and former TVA personnel. She discusses at length an effort undertaken by TVA in 1995 to identify and address employee safety concerns, arguing that most of these concerns were "reworded" or "calculated away." Contentions at 12-14. She also cites a September 5, 1995 letter from Mansour Guity, a former TVA employee, to Al Ignatonis of NRC that identifies several alleged noncompliances with 10 C.F.R. Part 50, Appendix B. *Id.* at 12, Attachment 4.

Ms. Honicker refers to several other sources of questionable relevance to her contention. She offers the testimony of "Mr. Sanford" to identify deficiencies in NRC Regulatory Guide 1.109 (1977), which was used by TVA during its initial licensing application to establish dose commitments to individuals and the public from routine atmospheric releases from Watts Bar. *Id.* at 18. She also relies on the testimony of Dr. Ernest Sternglass to establish the consequences of discontinuing monitoring for Strontium-90, another alleged result of the adoption of NRC Regulatory Guide 1.109. *Id.* at 18-19.

Staff's Response

Ms. Honicker is impermissibly challenging the proposed finding of "no significant hazards consideration" by the Staff. The Commission's regulations expressly prohibit such a challenge:

No petition or other request for review of or hearing on the staff's significant hazards consideration determination will be entertained by the Commission. The staff's determination is final, subject only to the Commission's discretion, on its own initiative, to review the determination.

10 C.F.R. § 50.58(b)(6). The Commission has not made any decision to review the Staff's

proposed no significant hazards consideration determination in this proceeding. The Atomic Safety and Licensing Board in this proceeding is therefore without authority to consider Ms. Honicker's contention, and it should be dismissed. *See Id.; Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant Units 1 and 2), CLI-86-12, 24 NRC 1, 4 (1986), *rev'd in part on other grounds, San Luis Obispo Mothers for Peace v. NRC*, 799 F.2d 1268 (9th Cir. 1986); *Florida Power and Light Co.* (Turkey Point Generating Plant, Units 3 and 4), LBP-89-15, 19 NRC 493, 499-500 (1989).

Ms. Honicker's contention that Watts Bar was not adequately constructed is beyond the scope of this license amendment proceeding. Her arguments that TVA and NRC have merely "calculated away" safety concerns over the years are similarly misplaced. These arguments are all designed to show that past and present NRC regulatory practices at Watts Bar and Sequoyah are insufficient to provide the level of safety required should the subject license amendments be granted. Because these arguments are direct attacks on the Commission's regulatory processes, they should be dismissed. *See Peach Bottom*, ALAB-216, 8 AEC at 20-21.

Ms. Honicker presents no evidence or argument regarding issues properly within the scope of this proceeding in her contention and cites to no portion of TVA's license amendment applications that she considers defective. Consequently, she has failed to demonstrate a genuine dispute of material fact or any issue of law within the scope of this proceeding and the contention must be dismissed. 10 C.F.R. § 2.714 (b)(2).

Contention 8

Granting the subject license amendments will make Sequoyah and Watts Bar prime targets of an attack similar to the September 11, 2001 attack on the World Trade Center.

In support of this contention, Ms. Honicker argues that the production of tritium at Sequoyah and Watts Bar would make the plants "weapons material production facilities" and "military targets." Contentions at 20.

Staff's Response

Ms. Honicker fails to provide an adequate basis for her contention that granting the subject license amendments will increase the likelihood of terrorist and/or military attack on Watts Bar and Sequoyah. She offers no factual data or expert testimony in support of her contention and includes no references to documents or other sources that support her view. Ms. Honicker does not refer to any portion of TVA's applications that she finds deficient. For all of these reasons, her contentions should be dismissed. See 10 C.F.R. § 2.714(b)(2).

Ms. Honicker's contention constitutes an attack on TVA's ability to provide adequate security for Watts Bar and Sequoyah in the event the subject license amendments are granted. It is well established under the Commission's regulations and precedents that contentions which attack an applicant's security plan on the grounds that it does not adequately protect against the effects of attacks or sabotage on a nuclear plant by an enemy of the United States are inadmissible. See 10 C.F.R. § 50.13; *Commonwealth Edison Co.* (Braidwood Nuclear Power Station, Units 1 and 2), LBP-85-27, 22 NRC 126, 135-36 (1985). The Commission recently reiterated this principle:

For example, reactor licensees are required to protect against a prescriptive list of possible threats, referred to collectively as the "design basis threat." However, our regulations stipulate that power reactors are not required to be designed or to provide other measures to counteract destructive acts by "enemies of the United States." The basis for this distinction is that the national defense establishment and various agencies having internal security functions have the responsibility to address this contingency, and that requiring reactor design features to protect against the full range of the modern arsenal of weapons is simply not practical.

Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation), CLI-01-26, 54 NRC ___, slip op. at 3-4 (2001). The national defense establishment is currently engaged in addressing the threat of terrorism posed by enemies of the United States; TVA is not required to do so in its applications. Notwithstanding the attacks of September 11, 2001 upon the World Trade Center and the Pentagon, the Commission has not modified this principle. Therefore, to the extent that

Ms. Honicker's contention would require TVA to guard against destructive acts by an enemy of the United States, it constitutes an impermissible attack on the regulations and should be dismissed. 10 C.F.R. § 2.758; *North Atlantic Energy Service Corp.* (Seabrook Station, Unit 1), CLI-99-6, 49 NRC at 217 n.8, 220-221.

CONCLUSION

In consideration of the foregoing, Ms. Honicker has failed to file any admissible contentions under the standards for admission of contentions in 10 C.F.R. § 2.714(b) with respect to either of the relevant nuclear facilities discussed herein. Therefore, she should not be admitted as a party to this proceeding.

Respectfully submitted,

/RA/

Jared K. Heck
Counsel for NRC Staff

Dated at Rockville, Maryland
this 3rd day of April 2002

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NUCLEAR REGULATORY COMMISSION

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NOTICE OF APPEARANCE

Notice is hereby given that the undersigned attorney enters an appearance in the above-captioned matter in accordance with 10 C.F.R. § 2.713.

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Admissions: State of Iowa
Name of Party: NRC Staff

Respectfully submitted,

/RA/

Jared K. Heck
Counsel for NRC Staff

Dated at Rockville, Maryland
this 1st day of April, 2002

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S ANSWER TO CONTENTIONS FILED BY MS. JEANNINE HONICKER" and "NOTICE OF APPEARANCE" for Jared K. Heck in the above-captioned consolidated proceedings have been served on the following with listed E-mail addresses or facsimile numbers by E-mail or facsimile transmission, respectively, and on all of the following by deposit in the United States mail, first class, or as indicated by an asterisk, by deposit in the Nuclear Regulatory Commission's internal mail system, or as indicated by a double asterisk, by overnight mail, this 3rd day of April 2002.

Atomic Safety and Licensing Board Panel*
Mail Stop: T-3F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Office of the Secretary*
Attn: Rulemakings and Adjudications Staff
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