LBP-02-14

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

RAS 4605 **DOCKETED 07/02/02**

ATOMIC SAFETY AND LICENSING BOARD

SERVED 07/02/02

Before Administrative Judges:

Thomas S. Moore, Chairman
Dr. Peter S. Lam
Dr. Thomas S. Elleman

In the Matter of TENNESSEE VALLEY AUTHORITY (Sequoyah Nuclear Plant, Units 1 & 2; Watts Bar Nuclear Plant, Unit 1)	Docket Nos. 50-327-OLA, 50-328-OLA, 50-390-OLA ASLBP No. 02-796-01-OLA July 2, 2002

MEMORANDUM AND ORDER
(Ruling On Intervention Petitions)

The Commission issued two notices of opportunity for hearing on the applications of the Tennessee Valley Authority (TVA) to amend the technical specifications (TS) of the two unit Sequoyah Nuclear Plant and the single unit Watts Bar Nuclear Plant. The TVA applications seek permission to produce tritium in three reactors for the Department of Energy's (DOE) weapons program. In response to the hearing notices, Jeannine Honicker of La Grange, Georgia, the Blue Ridge Environmental Defense League (BREDL), and We the People, Inc. (WTP) filed petitions to intervene in the proceedings on TVA's operating license amendment applications. As explained below, the intervention petition of Mrs. Honicker is denied for lack of standing, and the petition of BREDL is denied for failing to file any contentions. Although WTP, unlike Mrs. Honicker, has standing to intervene and, unlike BREDL, has proffered contentions, its petition nonetheless is denied for failure to submit an admissible contention.

I. Background

On December 17, 2001, the Commission published a notice of opportunity for hearing on the license amendment application of TVA for its Sequoyah Nuclear Plant, Units 1 and 2 located in Soddy-Daisy, Tennessee. See 66 Fed. Reg. 65,000 (Dec. 17, 2001). The requested technical specification changes seek permission to insert up to 2256 lithium burnable absorber rods into each of the Sequoyah reactor cores to produce tritium for DOE to use in maintaining its national defense inventory. Id.[1] According to the hearing notice, each Sequoyah reactor core contains 193 fuel assemblies consisting of 264 fuel rods. Id. The amendment would allow TVA to insert up to 24 tritium producing burnable absorber rods (TPBARs) in selected fuel assemblies to replace normal burnable neutron absorber rods. Id. The TPBARs will serve the same purpose as normal boron or gadolinium burnable absorber rods to shape neutron flux in the core, and like such rods, contain no fissile material. Id. Unlike normal burnable absorber rods, however, most of the lithium in the TPBARs will still remain at the end of core life, necessitating a number of additional changes in the Sequoyah TS. Id. at 65,001.

In this regard, the TVA license amendment application also requests permission to amend the Sequoyah TS to revise the measurement ranges for the source range neutron monitors and increase the required boron concentration for both the cold leg accumulators and the refueling water storage tank. Id. These TS changes are required because the enrichment of the uranium-235 fuel assemblies containing the TPBARs must be increased from its current enrichment percentage to no more than 4.95 weight percent to compensate for the higher

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[1]Although the Commission's hearing notice states that the requested TS changes "would allow TVA to insert up to 2256 tritium-producing burnable absorber rods (TPBARS) into the reactor cores to support DOE," 66 Fed. Reg. at 65,000, TVA's pleadings indicate that the requested TS changes would allow the insertion of up to 2256 TPBARs for each Sequoyah reactor core. See, e.g., Tennessee Valley Authority's Answer to Request for a Hearing and Petition to Intervene of Jeannine Honicker (Jan. 28, 2002) at 2 [hereinafter TVA Answer to Honicker Petition].

neutron absorbing properties of the lithium in the TPBARs. Id. Additionally, TVA seeks to amend the TS to (a) delete the boron concentration and spent fuel storage requirements for the cask pit pool; (b) establish a limit on the number of TPBARs that can be irradiated; (c) provide storage requirements for spent fuel assemblies containing TPBARs; and (d) implement requirements for TPBAR consolidation activities. Id.

On the same date it published the hearing notice on the amendment application for the Sequoyah reactors, the Commission published a second notice of opportunity for hearing on a similar operating license amendment application by TVA for the Watts Bar Nuclear Plant in Rhea County, Tennessee. See 66 Fed. Reg. 65,005 (Dec. 17, 2001). Similar to the Sequoyah license amendment application, the requested TVA technical specification changes for Watts Bar seek permission to insert up to 2304 TPBARs into the reactor core to produce tritium for DOE's weapons program. Id. at 65,006. Although not identical to the TS changes for the Sequoyah reactors, the requested Watts Bar TS amendments are very similar.

In response to the Commission's Sequoyah and Watts Bar hearing notices, Mrs. Honicker, BREDL, and WTP each filed petitions to intervene in the proceedings on the TVA operating license amendment applications.[2] On January 28, 2002, the Chief Administrative Judge consolidated the two proceedings and this Licensing Board was established to preside over them. See 67 Fed. Reg. 5003 (Feb. 1, 2002). Thereafter, TVA filed answers to the intervention petitions opposing the petitions on the grounds that the Petitioners lacked

[2]See Letter from Jeannine Honicker to U.S. Nuclear Regulatory Commission (Jan. 14, 2002) [hereinafter Honicker Petition]; Letter from Donald J. Moniak, BREDL to U.S. Nuclear Regulatory Commission (Jan. 16, 2002) [hereinafter BREDL Petition]; Letter from Ann Pickel Harris, Director, WTP to Nuclear Regulatory Commission (Jan. 16, 2002) [hereinafter WTP Watts Bar Petition]; Letter from Ann Pickel Harris, Director, WTP to Nuclear Regulatory Commission (Jan. 14, 2002) [hereinafter WTP Sequoyah Petition].

standing.[3] For its part, the NRC Staff filed an answer opposing the intervention petitions of BREDL and Mrs. Honicker on the grounds that the Petitioners lacked standing to intervene.[4] With respect to the WTP petition, however, the Staff's answer asserts that WTP has demonstrated standing.[5] In accordance with the date established by the Licensing Board for the Petitioners to exercise their right under the Commission's Rules of Practice, 10 C.F.R. § 2.714(a)(3), to amend their intervention petitions, Mrs. Honicker and WTP each filed amended petitions.[6] In their responses, TVA continues to oppose the petitions of Mrs. Honicker and WTP for lack of standing, while the Staff opposes Mrs. Honicker's petition on the same grounds.[7]

Mrs. Honicker and WTP also filed timely supplements to their petitions setting forth their contentions.[8] Both TVA and the Staff filed answers opposing the admission of both Petitioners'

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[3]See TVA Answer to Honicker Petition; Tennessee Valley Authority's Answer to Request for a Hearing and Petition to Intervene of Blue Ridge Environmental Defense League (Jan. 28, 2002) [hereinafter TVA Answer to BREDL Petition]; Tennessee Valley Authority's Answer to Request for a Hearing and Petition to Intervene of We the People Inc., Tennessee (Jan. 29, 2002) [hereinafter TVA's Answer to WTP Petition].

[4]See NRC Staff's Answer to Requests for Hearing and Leave to Intervene Filed by Blue Ridge Environmental Defense League and Mrs. Jeannine Honicker (Jan. 31, 2002) [hereinafter Staff Answer to BREDL and Honicker Petitions].

[5]See NRC Staff's Answer to Request for Hearing and Leave to Intervene Filed by We the People, Inc. Tennessee (Feb. 4, 2002) [hereinafter Staff Answer to WTP Petition].

[6]See Jeannine Honicker's Amended Petition to Intervene in the Hearing for a License Amendment for TVA to Produce Tritium at Sequoyah and Watts Bar (Feb. 14, 2002) [hereinafter Honicker Amended Petition]; We the People's Amended Petition for Request for a Hearing and Petition to Intervene (Feb. 21, 2002) [hereinafter WTP Amended Petition].

[7]See Response of Tennessee Valley Authority to Jeannine Honicker's Amended Petition to Intervene (Feb. 28, 2002); Response of Tennessee Valley Authority to We the People's Amended Request for a Hearing and Petition to Intervene and Motion to Strike (Feb. 28, 2002); NRC Staff's Answer to Jeannine Honicker's Amended Petition to Intervene (Feb. 28, 2002).

[8]See Contentions of Jeannine Honicker (Mar. 7, 2002); Contentions of We the People (Mar. 6, 2002) [hereinafter WTP Contentions].

proffered contentions on the grounds, inter alia, that the contentions failed to meet the standards in 10 C.F.R. § 2.714(b) for admissible contentions.[9]

Pursuant to the Commission's Rules of Practice, 10 C.F.R. § 2.714(a)(1) and (b)(1), a petitioner must demonstrate standing to intervene and proffer at least one admissible contention to be admitted as a party to an agency licensing proceeding. We turn now to address the questions of the Petitioners' standing and the admissibility of their contentions. Before doing so, however, we note that Petitioner BREDL filed no contentions in the proceeding. Therefore, we need not address the question of BREDL's standing to intervene. Because BREDL has failed to file at least one admissible contention and thereby meet one of the two mandatory prerequisites for admission as a party to the proceeding, its intervention petition is denied.

II. Standing

Section 189a of the Atomic Energy Act (AEA) requires the Commission to grant a hearing request in a proceeding to amend a reactor operating license "upon the request of any person whose interest may be affected by the proceeding." 42 U.S.C § 2239(a)(1)(A) (2000). The Commission's regulations effectuate this requirement by allowing any person whose interest may be affected by a Commission proceeding to file a petition to intervene. 10 C.F.R. § 2.714(a)(1). The petition must set forth the petitioner's interest in the proceeding and state how that interest may be affected by the proceeding. Id. § 2.714(a)(2). In determining whether a petitioner has a sufficient "interest" to intervene, the Commission has long applied

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[9]See Response of Tennessee Valley Authority to Proposed Contentions Filed by We the People and Jeannine Honicker (Apr. 4, 2002) [hereinafter TVA Contention Response]; NRC Staff's Answer to Contentions Filed by We the People, Inc., Tennessee (Apr. 3, 2002) [hereinafter Staff WTP Response]; NRC Staff's Answer to Contentions Filed By Mrs. Jeannine Honicker (Apr. 3, 2002).

contemporary concepts of judicial standing. Portland General Electric Company (Pebble Springs Nuclear Plant, Units 1 and 2), CLI-76-27, 4 NRC 610, 613-14 (1976).

Thus, to obtain standing in a Commission proceeding, the petitioner must allege "a concrete and particularized injury that is fairly traceable to the challenged action and likely to be redressed by a favorable decision." Georgia Institute of Technology (Georgia Tech Research Reactor, Atlanta, Georgia), CLI-95-12, 42 NRC 111, 115 (1995); accord Lujan v. Defenders of Wildlife, 504 U.S. 555 (1992). The petitioner must also demonstrate that the interest falls within the zone of interest of the statutes governing NRC proceedings -- generally, the AEA and the National Environmental Protect Act of 1969. Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Unit 1), CLI-93-21, 38 NRC 87, 92 (1993). This showing is required regardless of whether an individual or an organization is petitioning to intervene. Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation), CLI-99-10, 49 NRC 318, 323 (1999). When an organization chooses to intervene on behalf of one of its members, however, the organization must demonstrate that the individual member has standing to intervene and has authorized the organization to represent his or her interests. Georgia Tech, CLI-95-12, 42 NRC at 115.

Aside from the traditional requirements for standing, licensing boards in appropriate circumstances may also grant standing based upon a petitioner's proximity to the facility in question. This so-called proximity or geographical presumption "presumes a petitioner has standing to intervene without the need specifically to plead injury, causation, and redressability if the petitioner lives within, or otherwise has frequent contacts with, the zone of possible harm from the nuclear reactor or other source of radioactivity." Florida Power & Light Co. (Turkey Point Nuclear Generating Plant, Units 3 and 4), LBP-01-6, 53 NRC 138, 146 (2001), aff'd on other grounds, CLI-01-17, 54 NRC 3 (2001); accord Commonwealth Edison Co. (Zion Nuclear Power Station, Units 1 and 2), CLI-99-4, 49 NRC 185, 191 (1999). In St. Lucie, the

Commission articulated the standard for the appropriate application of the proximity presumption stating that:

> It is true that in the past, we have held that living within a specific distance from the plant is enough to confer standing on an individual or group in proceedings for construction permits, operating licenses, or significant amendments thereto such as the expansion of the capacity of a spent fuel pool. However, those cases involved the construction or operation of the reactor itself, with clear implications for the offsite environment, or major alterations to the facility with a clear potential for offsite consequences. Absent situations involving such obvious potential for offsite consequences, a petitioner must allege some specific "injury in fact" which will result from the action taken . . . .

Florida Power and Light Co. (St. Lucie Nuclear Power Plant Units 1 and 2), CLI-89-21, 30 NRC 325, 329 (1989) (citations omitted).

As the Commission subsequently indicated in Georgia Tech, CLI-95-12, 42 NRC at 116, the focus of the proximity presumption is upon whether "the proposed action involves a significant source of radioactivity producing an obvious potential for offsite consequences." The analysis then looks to determine whether the petitioner is within the potential zone of harm of the proposed action by examining the nature of the proposed action and the significance of the radioactive source. Id. at 116-17. "The determination of how proximate a petitioner must live or have frequent contacts to a source of radioactivity depends on the danger posed by the source at issue." Sequoyah Fuels Corp. (Gore, Oklahoma Site), CLI-94-12, 40 NRC 64, 75 n.22 (1994).

With this backdrop in mind, we address the standing of the intervenors in this proceeding.

A. WTP Petition

WTP, a nonprofit Tennessee organization that supports the safe operation of nuclear facilities, purports to intervene on behalf of two of its members, Ann Pickel Harris and Phil Carroll. See WTP Sequoyah Petition at 1-2; WTP Watts Bar Petition at 1-2. Mrs. Harris, the

WTP Director, claims to reside within 17 miles of the Watts Bar facility and contends that permitting TVA to produce “weapons grade tritium” will jeopardize her health, life, and property. WTP Watts Bar Petition at 1. Further, Mrs. Harris asserts that the increased likelihood of an accident at the Watts Bar plant due to the production of tritium will “irrevocably change the value of [her] property” and in the event of an accident make her residence “uninhabitable.” Id. According to his declaration, Mr. Carroll lives within 12 miles of the Sequoyah Nuclear Power Plant and believes that “his life health and property will be jeopardized if [the] Sequoyah Nuclear Power Plant is permitted to manufacture quantities of tritium for [the] U.S. nuclear weapons program.” WTP Sequoyah Petition, Decl. of Phil Carroll at 1. Both Mrs. Harris and Mr. Carroll authorize WTP to represent their interests in this proceeding. See id. at 2; WTP Watts Bar Petition at 2. In its amended petition, WTP indicates, inter alia, that it is relying upon the proximity presumption to establish its standing. According to WTP, both of its representative members live within 17 miles of either Watts Bar or the Sequoyah facility, which WTP claims is well within the facilities’ zone of harm. See WTP Amended Petition at 1. It also contends that the granting of the license amendment will greatly increase the likelihood of an accidental release. See id. at 2-3.

In response, TVA argues that the proximity presumption does not apply in this case, because the Petitioners fail to demonstrate how the proposed amendment will lead to offsite consequences. See TVA Answer to WTP Petition at 8. According to TVA, the Petitioner must demonstrate a “ ‘plausible chain of causation’ from the proposed amendment to offsite radiological injury,” and the Petitioners have not done so in this case. Id. at 8. The Staff also argues that the presumption does not apply in this case because the Petitioner has not demonstrated that the proposed amendments involve an obvious potential for offsite consequences. See Staff Answer to WTP Petition at 7 n.5. The Staff asserts, however, that under traditional judicial standing concepts, WTP has established standing. According to the

Staff, WTP's Petition demonstrates an injury in fact that potentially could be caused by the amendment and therefore would be redressed if the amendment was denied. See id. at 7-8.

Contrary to the arguments of TVA and the Staff, the proximity presumption does not require a showing of causation with respect to how the proposed amendment will lead to an obvious potential for offsite consequences. As the previous discussion on the proximity presumption indicates, the appropriate focus is upon "the nature of the proposed action and the significance of the radioactive source." Georgia Tech, CLI-95-12, 42 NRC at 116-17. Here, WTP's representative members live within 17 miles of the two nuclear facilities at which TVA proposes to add tens of millions of curies of highly combustible radioactive hydrogen gas to the already significant core inventory of the Watts Bar and Sequoyah reactors. On its face, the potential for offsite consequences in such circumstances is obvious. Thus, because WTP's representative members live within 17 miles of the facilities, which is far less than the 50-mile radius applicable for the presumption in reactor construction permit and operating license proceedings, it may reasonably be presumed in this particular reactor amendment proceeding that they live within the area likely to be affected by a severe accident at one of the facilities. And, because the potential for offsite consequences is obvious, the proximity presumption does not require WTP to demonstrate the traditional standing elements of injury, causation, or redressability. Accordingly, WTP has standing to intervene.

B. Mrs. Jeannine Honicker's Petition

Similar to WTP, Mrs. Honicker also attempts to use the proximity presumption to establish standing. Admitting that she does not live within a 50-mile radius of the Watts Bar or Sequoyah facilities, she claims, nevertheless, to "frequent the area." Honicker Amended Petition at 2. According to her petition, these "frequent" trips include attending TVA board meetings, expected use of the TVA libraries, and visiting her family and rental property, which are both located within 50 miles of the two facilities. See id. at 2-3.

Mrs. Honicker contends that her frequent trips to an area within a 50-mile radius of the Watts Bar and Sequoyah facilities bring her within the zone of potential harm for these two facilities. As previously discussed, however, the 50-mile zone of potential harm presumed for reactor construction permit and operating license proceedings does not automatically apply to operating license amendment proceedings. Instead the zone of harm must be determined on a case-by-case basis, examining the significance of the radioactive source in relation to the distance involved and the type of action proposed. Georgia Tech, CLI- 95-12, 42 NRC 116-17. Unlike WTP, however, Mrs. Honicker's pleadings do not indicate the actual distances these activities bring her from the Watts Bar and Sequoyah facilities so we cannot determine whether the proximity presumption is applicable.

Moreover, the proximity presumption only applies to petitioners who reside or have frequent contact with a facility's zone of possible harm. In this case, because Mrs. Honicker does not reside within the zone of harm for Watts Bar or Sequoyah, the frequency of her contacts within this zone became an essential factor in our decision. In the past, Licensing Boards have found mere occasional trips to areas located close to reactors to be insufficient grounds to demonstrate a risk to the intervenor's health and safety. See e.g., Washington Public Power Supply System (WPPSS Nuclear Project No. 2), LBP-79-7, 9 NRC 330, 337-38 (1979). Instead, petitioners must demonstrate that the frequency of their contact within the zone of possible harm occurs on a regular basis that is akin to the kind of contact residency provides. Georgia Tech, CLI-95-12, 42 NRC at 116-17; Gulf States Utilities Co. (River Bend Station, Units 1 and 2), ALAB-183, 7 AEC 222, 226 (1974). Mrs. Honicker's petition, however, fails to indicate the frequency that she is within the anticipated zone of harm. At best her pleadings demonstrate only occasional contact with the zone of harm, not the regular interaction required. Thus, without a great deal more information than she sets out in her intervention filings, we cannot conclude that her contacts with the potential zone of harm are of

a sufficient frequency that they are tantamount to residing in the area. Because her contacts do not rise to the level of frequency required, Mrs. Honicker has failed to plead the necessary facts that would make the proximity presumption applicable.

Further, because the proximity presumption does not apply, Mrs. Honicker's petition must be examined to determine whether it meets traditional judicial concepts for standing, i.e., she must demonstrate an actual, concrete harm resulting from the proposed activity that will be redressed by a favorable decision. Pebble Springs, CLI-76-27, 4 NRC at 613-14. In her petition, Mrs. Honicker makes several claims of potential harm that she argues will occur if the license amendment is granted. First, she claims that food grown or raised near the Watts Bar and Sequoyah facilities may be contaminated and placed into the food supply. See Honicker Amended Petition at 4-5. Mrs. Honicker also contends that the if amendment is granted, she will be constantly fearful of harm to her family who live upwind of the reactor. See id. at 3. Finally, she argues that if a terrorist attack occurs while she is in Knoxville during a University of Tennessee home football game she could be trapped in traffic and unable to escape from harm. See id. at 4.

After reviewing her claims, we find none of the potential harms alleged by Mrs. Honicker sufficient to grant her standing as a matter of right in this proceeding. Her fear of receiving contaminated food that has been grown or raised near either Watts Bar or Sequoyah is too remote and generalized to provide a basis for standing. Compare Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), LBP-82-43A, 15 NRC 1423, 1449 (1982) (finding claims of contamination to the general food supply which may in turn be consumed by the petitioner too remote and general to confer standing), with Allied-General Nuclear Services (Barnwell Fuel Receiving and Storage Station), ALAB-328, 3 NRC 420, 423-24 (1976) (finding standing for an intervenor that consumed or sold produce grown in a garden sponsored by the intervenor that was located along an established transportation route that might occasion harm

as a result of radiation release). Her claim, in this regard, also fails to provide a causal connection between the proposed license amendment and the anticipated harm. For example, her petition provides no explanation of how the "contaminated" food will find its way to her dinner plate.

Mrs. Honicker's claim of mental anguish has previously been found by the Commission to be outside the zone of interest of the AEA and thus it is not a recognizable harm upon which her standing can be based. See Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit No. 1), CLI-82-6, 15 NRC 407 (1982). Similarly, her claim of harm from a potential terrorist attack while trapped in traffic in the vicinity of either Watts Bar or Sequoyah is a matter outside the scope of the proceeding so it cannot support her claim of standing. See 10 C.F.R. § 50.13. Moreover, as her amended petition indicates, such an injury requires the simultaneous concurrence of a terrorist attack occurring while she is trapped in a traffic jam on an interstate highway caused by a home University of Tennessee football game within the zone of potential harm. The need for these events to occur simultaneously demonstrates the speculative nature of her claim of harm.

In addition to her claims being remote and speculative and outside the AEA's zone of interest, Mrs. Honicker's petition also fails to demonstrate that the alleged injuries would be redressed by a favorable Board decision. The Watts Bar and Sequoyah facilities are licensed operating reactors and the likelihood of the injuries articulated by Mrs. Honicker is just as high with or without the proposed license amendment. In this situation, a favorable decision denying the license amendment would not redress her alleged injuries. Thus, because Mrs. Honicker's claimed potential harms do not establish a concrete, actual harm that would be redressed by this proceeding, she has not established her standing as a matter of right to intervene.

Although Mrs. Honicker has not demonstrated her standing as a matter of right, Commission jurisprudence allows Licensing Boards to grant discretionary standing to

intervenors who do not meet the judicial standing tests. Pebble Springs, CLI-76-27, 4 NRC at 616. In deciding whether to grant discretionary standing, the Commission in Pebble Springs established several factors for Licensing Boards to consider. These factors include:

> (a) Weighing in favor of allowing intervention--
> (1) The extent to which the petitioner's participation may reasonably be expected to assist in developing a sound record.
> (2) The nature and extent of the petitioner's property, financial, or other interest in the proceeding.
> (3) The possible effect of any order which may be entered in the proceeding on the petitioner's interest.
>
> (b) Weighing against allowing intervention--
> (4) The availability of other means whereby petitioner's interest will be protected.
> (5) The extent to which the petitioner's interest will be represented by existing parties.
> (6) The extent to which petitioner's participation will inappropriately broaden or delay the proceeding.

Id. Subsequent decisions demonstrate that foremost among these factors is whether the intervenor will produce a valuable contribution to the decision making process. Tennessee Valley Authority (Watts Bar Nuclear Plant, Units 1 and 2), ALAB-413, 5 NRC 1418 (1977); Public Service Co. (Black Fox Station, Units 1 and 2), ALAB-397, 5 NRC 1143 (1977). Moreover, the need for a strong demonstration that Mrs. Honicker will make a significant contribution to the proceeding is especially important where, as we ultimately rule here, no other Petitioners have put forth a successful request for intervention. Watts Bar, ALAB-413, 5 NRC at 1422.

During a previous hearing concerning the Watts Bar facility, Mrs. Honicker also petitioned to be granted discretionary intervention. It was determined, however, that she did not demonstrate any qualifications or expertise that could make a substantial contribution to that hearing and she was denied such standing. Id. at 1422-23. Similar to the previous Watts Bar proceeding, Mrs. Honicker makes a request in this case to be granted discretionary standing if

"the arguments that I have made still do not satisfy your rules for standing." Honicker Amended Petition at 6. Nothing in her petition, however, indicates that Mrs. Honicker has acquired the specialized knowledge or experience that was found lacking in the previous proceeding and that now would allow her to make a substantial contribution in this one.

Although Mrs. Honicker indicates a general familiarity with these proceedings and the Watts Bar and Seqouyah facilities in particular from her previous attempt to intervene, she has not demonstrated that her familiarity will allow her to make a substantial contribution to the present proceeding. Her petition raises several questions that she claims are relevant, but she fails to show how her involvement in the proceeding will help resolve these questions. Additionally, she fails to demonstrate any specialized education in these matters or the intent to produce expert opinion that will assist in evaluating the license amendment request. And, as the discussion of her standing indicates, she has not pled any substantial interest in this proceeding that will be harmed if she is not granted discretionary standing to intervene. Thus, the Petitioner has failed to show that the Board should exercise its discretion favorably toward her request to participate in this proceeding by granting her discretionary intervention. Because the Board has also determined that she has failed to establish standing both under the proximity presumption and as a matter of right, her petition is denied.

III. Contentions

In addition to establishing standing, a petitioner must also proffer at least one admissible contention in order to be admitted as a party to the proceeding. 10 C.F.R. § 2.714(b)(1). In order to be admissible, each contention must specify the precise issue of law or fact being raised. Id. § 2.714(b)(2). Additionally, subsections 2.714(b)(2)(i), (ii), and (iii) provide that each contention 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 support 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 . . . 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 . . . 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.

Finally, pursuant to 10 C.F.R. §2.714(d)(2)(ii) (2001), the contention cannot be one that, even if proven, would be of no consequence to the proceeding and entitle the petitioner to no relief.

The contention pleading criteria in section 2.714(b)(2) are mandatory. The Commission has stated that "[i]f any one of these requirements is not met, a contention must be rejected." Arizona Public Service Co. (Palo Verde Nuclear Generating Station, Units 1, 2, and 3), CLI-91-12, 34 NRC 149, 155 (1991); accord Duke Energy Corp. (Oconee Nuclear Station, Units 1, 2, and 3), CLI-99-11, 49 NRC 328, 335 (1999); see Final Rule, Rules of Practice for Domestic Licensing Proceedings -- Procedural Changes in the Hearing Process 54 Fed. Reg. 33,168, 33,171 (Aug. 11, 1989) [hereinafter Procedural Changes in the Hearing Process]. The provisions of section 2.714 were specifically adopted by the Commission "to raise the threshold bar for an admissible contention" and prohibit " 'vague, unparticularized contentions' or 'notice pleading, with the details . . . filled in later.' " Oconee, CLI-99-11, 49 NRC at 334, 338.

Moreover, it is the burden of the petitioner to come forward with contentions meeting the pleading rules. Baltimore Gas & Electric Co. (Calvert Cliffs Nuclear Power Plant, Units 1 and 2), CLI-98-14, 48 NRC 39, 41 (1998). A licensing board is not free to supply missing information or draw factual inferences on the petitioner's behalf. See Palo Verde, CLI-91-12, 34 NRC at 155-56. As emphasized in the Statement of Policy on Conduct of Adjudicatory

Proceedings, CLI-98-12, 48 NRC 18, 22 (1998), "[a] contention's proponent, not the licensing board, is responsible for formulating the contention and providing the necessary information to satisfy the basis requirement for the admission of contentions in 10 C.F.R. § 2.714(b)(2)."

In addition to the contention pleading requirements of section 2.714(b)(2), a number of other long-established principles of NRC adjudication also limit the subject matter of contentions. For example, licensing boards have jurisdiction over those matters that the Commission commits to them in the various hearing notices and referral orders that identify the subject matters of the hearing. See Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), ALAB-825, 22 NRC 785, 790 (1985); Public Service Co. (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-316, 3 NRC 167, 170-71 (1976). A contention is therefore admissible only if it is within the scope of the proceeding outlined in the Commission's hearing notice and referral order. Wisconsin Electric Power Co. (Point Beach Nuclear Plant, Units 1 and 2), ALAB-739, 18 NRC 335, 339 (1983). Further, a contention attacking or challenging a Commission rule or regulation is inadmissible and that inadmissibility bar applies to contentions proffering, for example, additional or stricter requirements than those that are imposed by the respective regulation. See 10 C.F.R. § 2.758(a); Oconee, CLI-99-11, 49 NRC at 334; Public Service Co. (Seabrook Station, Units 1 and 2), CLI-89-8, 29 NRC 399, 416-17 (1989); Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), CLI-87-12, 26 NRC 383, 395 (1987); Public Service Co. (Seabrook Station, Units 1 and 2), LBP-82-106, 16 NRC 1649, 1656 (1982).

With these standards and requirements as a backdrop, we now review the six contentions proffered by the only petitioner with standing, WTP. Each of WTP's contentions is supported by the declaration of Dr. Kenneth D. Bergeron, who holds bachelor's, masters's, and doctoral degrees in physics. His declaration states that he is "currently a self-employed writer specializing in the social and political aspects of science and technology." WTP Contentions,

Decl. of Kenneth D. Bergeron, Ph.D. (Mar. 6, 2002). Dr. Bergeron claims to have gained extensive experience "in a variety of scientific fields in [his] 25-year career at the Department of Energy's Sandia National Laboratories in Albuquerque, NM," and is "familiar with the [TVA] request for a license amendment to allow the production of tritium." Id. In addition, Dr. Bergeron asserts that he is familiar with and has experience in the safety analysis of the reactors at issue in this proceeding and was co-author of the NRC's most recent study of hypothetical accidents at the plants (NUREG/CR-6427, "Assessment of the DCH Issue for Plants with Ice Condenser Containments" (Apr. 2000)). His declaration states that he assisted in the preparation of and reviewed WTP's contentions. Further, Dr. Bergeron states that the technical facts in the contentions are true and correct to the best of his knowledge and that the conclusions drawn from those facts are based upon his best professional judgment.

A. Contention 1

WTP's first contention states:

> 1. The following issue constitutes Unresolved Safety Issues [sic] per 10 CFR 50.59 and would cause Harris and Carroll great physical and economic harm by denying them access to clean water for drinking and recreation.
>
> 1.1 The increased tritium release from the reactors during normal operations have [sic] not been adequately evaluated based on actual case studies. Using computer models to substitute for actual data when actual data is [sic] available should not be permitted for this LAR.
>
> 1.2 The increased tritium releases from the reactor during normal operations have not been adequately evaluated based on and or [sic] during abnormal operations; i.e., operating with cracked tritium rods that will dramatically increase the levels of tritium release to the environment have not been adequately evaluated based on actual case studies.
>
> 1.3 The increased tritium releases from a reactor meltdown that would occur after an attack on the containment by terrorist piloted aircraft would be catastrophic. This type of situation would release the entire core inventory of millions of curies of tritium that would render the Tennessee River unusable and destroy any life in the river and therefore would deny

> Harris and Carroll, as well as large populations located on the river, opportunities for recreation and clean drinking water.[10]

The Licensee and the Staff both argue that this contention is inadmissible for failing to set forth a sufficient basis as required by 10 C.F.R. § 2.714(b)(2). Specially, they assert that the contention fails to identify the particular portions of the TVA applications that WTP disputes or provide any explanation or documentation of its grounds for challenging the applications. In addition, TVA and the Staff assert that the portions of the contention dealing with terrorist threats to the facility are beyond the scope of the license amendment proceeding. See TVA Contention Response at 8-14; Staff WTP Contention Response at 4-6.

TVA and the Staff are correct that contention 1 is inadmissible. The portion of the contention designated paragraph 1 asserts just a generality that the "following issue constitutes Unresolved Safety Issues [sic] per 10 CFR 50.59" and would cause WTP's members "great physical and economic harm." On its face, paragraph 1 is hardly a model of clarity. To the extent paragraph 1 is interpreted as a statement of the issue WTP seeks to raise in its first contention (i.e., an unresolved safety issue under section 50.59), that asserted issue has no direct bearing on the adequacy of the TVA license amendment application. Section 50.59, titled "[c]hanges, tests, and experiments," permits a licensee to make changes and conduct tests and experiments to a facility without first obtaining a license amendment if certain specified conditions are met. Conversely, the section generally requires a license amendment prior to implementing a proposed change, test, or experiment if those conditions are not met. Here, quite obviously, TVA has submitted amendment applications for review, so section 50.59 is irrelevant to the amendment process. Thus, paragraph 1 of WTP's first contention fails to identify a specific litigable issue as required by 10 C.F.R. § 2.714(b)(2), and this portion of the

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[10] WTP's contentions are referenced by the designated contention number and, where appropriate, paragraph number because the Petitioner failed to paginate its contention filing.

contention is inadmissible. Paragraphs 1.1, 1.2, and 1.3 of the contention stand on no better footing. This is so regardless of whether these three paragraphs are viewed as providing the putative bases for the asserted issue in paragraph 1 or whether each is regarded as raising a new issue with a supporting basis.

Paragraph 1.1 asserts that increased tritium releases from the reactors have not been adequately evaluated "based on actual case studies" and that "when actual data is [sic] available" computer models should not be permitted. This claim, however, does not identify what part of TVA's amendment applications are deficient, detail the allegedly available data, or provide such supporting data, all as required by section 2.714(b)(2). Nor does WTP explain, as the contention pleading rules require, why computer modeling is inadequate to determine the consequences of tritium releases, or how such modeling is incorrect or contravenes agency regulations. Thus, paragraph 1.1 does not provide an adequate basis for the issues sought to be raised by either paragraphs 1 or 1.1.

Paragraph 1.2 also fails to meet the requirements of section 2.714(b)(2). In that paragraph, WTP asserts that increased tritium releases during abnormal operations with cracked tritium rods have not been evaluated based upon actual case studies. Once again, WTP does not identify, as it must under section 2.714(b)(2)(iii), the portion of the license amendment applications that it claims are inadequate or incorrect. Similarly, WTP does not explain how TVA's modeling is deficient or how it violates NRC regulations. See e.g., 10 C.F.R. § 20.1302(b)(1)(stating that "a licensee shall show compliance with the annual dose limit in § 20.1301 by -- (1) Demonstrating by measurement or calculation . . . ."). Thus, regardless of whether paragraph 1.2 seeks to raise a new issue, it fails to provide an adequate basis for that issue or the one purportedly asserted in paragraph 1.

In paragraph 1.3, WTP posits a terrorist aircraft attack on one of the TVA facilities causing a release of the entire core inventory of tritium, thereby rendering the Tennessee River

unusable and destroying all life in the river. As both TVA and the Staff argue, this portion of WTP contention 1 raises a matter beyond the scope of the proceeding. Whether the issue WTP seeks to raise is viewed as a safety issue or an environmental one, consideration of a terrorist attack upon a reactor causing a beyond design basis accident is barred by the Commission's regulations and cannot be considered in a reactor licensing or amendment proceeding. See 10 C.F.R. § 50.13; Long Island Lighting Co. (Shoreham Nuclear Power Station), ALAB-156, 6 AEC 831, 851 (1973); Duke Energy Corp. (McGuire Nuclear Station, Units 1 and 2, Catawba Nuclear Station, Units 1 and 2), LBP-02-04, 55 NRC 49, 112-13 (2002), review pending, CLI-02-06; 55 NRC 164 (2002); Dominion Nuclear Connecticut (Millstone Nuclear Power Station, Unit 3), LBP-02-05, 55 NRC 131, 142-45 (2002), review pending, CLI-02-5, 55 NRC 161 (2002). Thus, paragraph 1.3 neither provides a basis for the asserted issue in paragraph 1 nor raises an issue that is litigable in this license amendment proceeding. Accordingly, WTP contention 1 is inadmissible.

B. Contention 2

In its second contention, WTP alleges that "[t]he addition of a nuclear-weapons related-role for these plants will increase the likelihood of sabotage-induced accidents that result in massive releases of radioactivity into the environment" and that the physical protection measures of 10 C.F.R. Part 73 are inadequate to protect WTP's members. The contention then asserts that the NRC's ongoing top to bottom review of physical protection measures is prima facie evidence of the inadequacy of the agency's current requirements. The bases for WTP's second contention are set forth in five single-spaced pages, along with a number of exhibits, and are contained in paragraphs 2.1 through 2.7 with paragraph 2.2 having ten sub-paragraphs, 2.2.1 through 2.2.10.

In paragraph 2.1, WTP recites various indicators allegedly showing that all nuclear power plants are likely terrorist targets and then, in paragraphs 2.2 and its 10 subsidiary parts,

it explains why the tritium producing TVA reactors will be particularly attractive terrorist targets. Next, in paragraph 2.3, WTP states that all three TVA reactors are ice condenser units and asserts, with references to various NRC studies, that such reactors "are characterized by exceptionally poor performance of the containment systems in preventing release of radioactivity in the event of key categories of core melt accident." Then in paragraph 2.4, WTP claims that "there are specific and particular ways that the three TVA plants under consideration are exceptionally vulnerable to certain types of terrorist attack." Although, acknowledging that its materials on plant vulnerabilities are not classified, WTP nonetheless states in paragraph 2.5 that its concern for national security prevents it from providing any of the details in a public document. Hence, it only describes them in general terms in paragraphs 2.6 and 2.7, explaining that they deal with early release frequency and core damage frequency. In light of its security concerns, WTP asks for the Board's indulgence for the vagueness of its contention and concedes that its request "appears inconsistent with the requirements of 10 CFR 2.714." Contention 2 ¶ 2.5.

TVA and the Staff both oppose admission of contention 2 arguing that the issue of a terrorist attack on the TVA facilities is barred by the Commission's regulations and, therefore, beyond the scope of the proceeding. See TVA Contention Response at 15; Staff WTP Contention Responses at 7-8. TVA also separately addresses WTP's assertions in paragraphs 2.3 through 2.7 dealing with ice condenser containments. It argues, inter alia, that the Sequoyah and Watts Bar ice condenser containment plants are already operating under NRC licenses and WTP's assertions are, therefore, a challenge to the existing design basis of the facilities that is outside the scope of the proceeding as well as an impermissible challenge to the agency's design basis regulations. See TVA Contention Response at 17. For its part, the Staff also argues that to the extent a portion of WTP's second contention is interpreted as seeking to challenge the adequacy of the physical protection measures required by 10 C.F.R.

Part 73, the contention is a prohibited attack on the Commission's regulations. See Staff WTP Contention Response at 7-8.

Much like paragraph 1.3 of WTP's first contention that posits a terrorist attack on the TVA facilities resulting in catastrophic consequences, its second contention seeks to raise the issue of the increased likelihood of a terrorist attack on the Sequoyah and Watts Bar reactors because their "nuclear-weapons-related-role" and asserted exceptional vulnerability would result in massive radioactive releases. As in the case of paragraph 1.3 of contention 1, WTP's contention 2 is also barred by the Commission's regulations, 10 C.F.R. § 50.13, and is, therefore, beyond the scope of the proceeding. Regardless of the perceived attractiveness of the TVA facilities as terrorist targets or the supposed unique vulnerabilities of these facilities, the linchpin of contention 2 is a terrorist attack upon the facilities -- a subject prohibited from litigation by Commission regulations. Thus, the contention is inadmissible. Because all parts of WTP's second contention clearly and directly relate to the subject of a terrorist attack on the facilities, there is no need to deal separately with any of the interrelated bases for the contention.

C. Contention 3

WTP's third contention asserts, in effect, that the NRC makes regulatory safety decisions on the basis of benefit-cost balancing and, here, the proposed plant changes will reduce safety margins without providing any benefits so the changes are unjustified. As the bases for this contention, WTP first states that TVA has requested numerous TS changes, including decreasing the time interval between the point the spent fuel pool loses cooling and the pool inventory boils off uncovering the spent fuel, which it claims increases the risks to the surrounding population. Contention 3 ¶ 3.1. WTP then asserts there are no benefits to TVA from the proposed plant changes because (1) TVA must supply the irradiation services at cost to DOE under the Economy Act so there is no financial benefit to TVA's ratepayers; (2) NRC

lacks authority to authorize TVA to produce nuclear weapons material so no benefit can be attributed to the changes to balance the cost to the surrounding public; and (3) DOE does not need a new tritium supply until 2016 so there is plenty of time to develop facilities with less adverse effects on the public health and welfare. See Contention 3 ¶¶ 3.6 to 3.11.

TVA and the Staff oppose the admission of the contention. In effect, they both argue that WTP has provided no basis for the premise of the contention that a license amendment can only be granted after a favorable benefit-cost analysis by the NRC and, in fact, there is no such statutory or regulatory requirement. This being so, TVA and the Staff also argue that, even if there are no benefits to TVA from the requested amendments, there is no relief that can be granted to WTP, and the contention is inadmissible pursuant to 10 C.F.R. § 2.714(d)(2)(ii)(2001).

As TVA and the Staff correctly argue, contention 3 is inadmissible. Contrary to the requirement of section 2.714(b)(2), WTP fails to provide any basis for the premise of contention 3 that an NRC safety benefit-cost analysis (in contrast to an environmental one) must justify the proposed license amendments. Nor could WTP provide such a basis for its contention because there is no statutory or regulatory requirement that an applicant demonstrate any benefit from a requested license amendment. Similarly, with the exception of the backfit rule, 10 C.F.R. §50.109, which is inapplicable here, there is no requirement that the NRC make a safety benefit-cost determination in granting or denying an application. Rather, an applicant must satisfy the requirements of 10 C.F.R. § 50.90 and demonstrate that the requested amendment meets all applicable regulatory requirements and acceptance criteria and does not otherwise harm the public health and safety or the common defense and security. See, e.g., AEA §182a,42 U.S.C. § 2232a (2000); 10 C.F.R. § 50.57. As the Appeal Board stated years ago with respect to the "adequate protection to the health and safety of the public" standard in

section 182a of the AEA and the derivative "reasonable assurance" standard of section 50.57(a)(3) of the Commission's regulations,

> [t]he decision as to whether a threat to health and safety is posed by any particular activity obviously does entail an assessment of the nature and extent of the risks involved. But the quantum of protection to, or endangerment of, public health and safety is not dependent likewise upon how much benefit will be obtained from the activity. In the present context, a specific nuclear power facility is no safer because it is needed and, by the same token, is no more endangering to health and safety because it might be dispensable.
>
> We might be prepared to lay the statutory terminology to one side if there were legislative history reflecting a congressional contemplation that a safety determination mandated by the Act might, in some circumstances at least, involve a risk-benefit balancing. Our attention has been directed to no such history and, insofar as we have been able to ascertain, there is none.
>
> Nor, to our knowledge, has the Atomic Energy Act or the Commission's regulations ever been so construed, either judicially or administratively.

Maine Yankee Atomic Power Co. (Maine Yankee Atomic Power Station), ALAB-161, 6 AEC 1003, 1006-07 (1973). Because there is no safety benefit-cost analysis involved in NRC's determination to grant or deny a license amendment application, there necessarily is no relief that can be granted WTP even assuming arguendo that there is no net benefit to the requested license amendments. Thus, contention 3 also is inadmissible pursuant to 10 C.F.R. § 2.714(d)(2)(ii) (2001).

D. Contention 4

In its fourth contention, WTP asserts that "[t]he NRC's License Amendment Review process has, to date, been hurried, limited, and too narrowly focused" and as a result it does not provide adequate assurance the health of local citizens will be protected if the proposed amendments are granted. As the bases for contention 4, WTP makes two principal points in support of its contention that the NRC's review has been too limited and hurried. First, as set out in paragraph 4.1 and in an attempt to show how the NRC review has been too narrowly focused, WTP asserts (as it also did in contention 2) that the Sequoyah and Watts Bar ice

condenser containments will fail under severe accident conditions when coupled with station blackout sequences. This being so, WTP indicates that the NRC has failed to conduct a risk-informed analysis of the proposed TVA amendments even though the "special circumstances" test detailed in NRC Regulatory Issue Summary 2001-02, "Guidance on Risk-Informed Decisionmaking in License Amendment Reviews," (Jan. 18, 2001) has been met. See Contention 4 ¶¶ 4.1.1 through 4.1.4. Second, as set out in paragraph 4.2 and to show how the NRC review has been hurried, WTP asserts that NRC's no significant hazards consideration determination under 10 C.F.R. § 50.92 is incomplete and premature because the agency is still in the midst of assessing the adequacy of physical protection measure for its regulated facilities following last year's terrorist attacks. Further, WTP claims that the NRC pushed ahead with its no significant hazards consideration determination and ignored the fact that most of the information needed by the public for filing timely comments on the Staff's proposed determination was unavailable on the agency's electronic library system, ADAMS, due to the NRC's actions following the terrorist attacks of September 11, 2001. According to WTP, the two most critical documents were not even placed on ADAMS until after the close of the public comment period. See Contention 4 ¶ 4.2.2. TVA and the Staff oppose the admission of WTP contention 4, in effect, on the grounds that it raises an issue not within the scope of the proceeding. See TVA Contention Response at 29; Staff WTP Contention Response at 11-12.

Contention 4 is clearly inadmissible. It is a well-established principal of NRC adjudication that "contentions must rest on the license application, not on NRC Staff reviews." Baltimore Gas and Electric Co. (Calvert Cliffs Nuclear Power Plant, Units 1 and 2), CLI-98-25, 48 NRC 325, 349 (1998). As the Commission stated when it amended the contentions rule, "a contention will not be admitted if the allegation is that the NRC Staff has not performed an adequate analysis" because "the sole focus of the hearing is on whether the application satisfies NRC regulatory requirements, rather than adequacy of the NRC Staff performance."

Procedural Changes in the Hearing Process, 54 Fed. Reg. at 33,171. See also Curators of the University of Missouri (Trump-S Project), CLI-95-8, 41 NRC 386, 396 (1995); Louisiana Power and Light Co. (Waterford Steam Electric Station, Unit 3), ALAB-812, 22 NRC 5, 55-56 (1985). Here, WTP contention 4 and its asserted bases are aimed directly at the alleged hurried and limited nature of the Staff review of the proposed TVA amendments. Nowhere does the contention identify, much less address and analyze, any part of the TVA license amendment applications or, for example, demonstrate why the application is deficient for failing to conduct a risk analysis. Rather, the sole focus of WTP's contention is on the perceived inadequacies of the Staff's review -- a subject which is not litigable in adjudicatory proceedings. Accordingly, contention 4 seeks to raise an issue beyond the scope of the proceeding and is, therefore, inadmissible.

E. Contention 5

In its fifth contention, WTP claims that TVA does not provide a safety-conscious work environment for plant employees to raise safety concerns without fear of retaliation in violation of the NRC's policy statement, "Freedom of Employees in the Nuclear Industry to Raise Safety Concerns without Fear of Retaliation," 61 Fed. Reg. 24,336 (May 14, 1996). The asserted bases for this contention are long and involved consisting of four single-spaced pages and two newspaper articles as exhibits. In essence, WTP's bases assert that adding a second mission to TVA's primary one of electricity production, as well as adding DOE as another customer, is "likely" to make maintaining an adequate safety culture more difficult and "likely" to reduce the commitment to safety at the top levels of TVA management. Contention 5 ¶¶ 5.1, 5.1.2. Further, WTP states that the classified nature of some aspects of tritium production creates an institutional problem between security and the need to protect the public health and environment in which it is not possible to optimize one without compromising the other. See Contention 5 ¶ 5.1.3. Next, WTP asserts that recent events such as the whistleblower case at

Sequoyah and the one at Watts Bar demonstrate that the working atmosphere at the TVA plants is hostile to safety consciousness and retaliatory of those who raise valid safety issues, thereby making it impossible for an adequate safety culture to be maintained. See Contention 5 ¶¶ 5.1.5 to 5.2.3. Finally, WTP claims that its safety culture concerns are amplified because the TVA reactors are at the margin of acceptability with respect to severe accidents due to their ice condenser containments, problems with components of the hydrogen control systems, and questions about the diesel generators. See Contention 5 ¶¶ 5.4 to 5.5.4. TVA and the Staff argue that WTP contention 5 is inadmissible for failing to set forth an adequate basis demonstrating a genuine factual or legal dispute as required by section 2.714(b)(2). See TVA Contention Response at 31; Staff WTP Contention Response at 13-14.

WTP's contention asserts, in effect, that TVA's failure to provide a safety-conscious work environment that allows employees to raise safety concerns without fear of retaliation violates the Commission 1996 policy statement on this subject. WTP's asserted bases, however, do not support its issue statement and neither the issue statement nor the bases show a genuine dispute of a material issue as required by the Commission's contention pleading rules. Although the cited policy statement is just that, a policy and not an enforceable regulation, disregard of the substance of the policy statement by TVA may be indicative of circumstances violating the NRC's regulation dealing with employee protection, 10 C.F.R. § 50.7. After claiming violation of the Commission's policy in the issue statement of contention, none of WTP's asserted bases even mention the policy statement, much less the applicable regulation, and show how any TVA conduct with respect to the license amendments at issue violates section 50.7. Without this indispensable connection, the bases fail "to show that a genuine dispute exists with the applicant on a material issue of law or fact" as required by section 2.714(b)(2)(iii).

Even putting to one side this glaring and fatal defect, WTP's assertions to the effect that tritium production is incompatible with TVA maintaining an adequate safety culture are highly speculative. To be given any credence and meet the requirements of section 2.714(b)(2)(ii), such claims must be based upon the opinion of an individual expert in safety culture matters -- an expertise not apparent in WTP's affiant. Finally, WTP's assertions regarding two past whistleblower incidents at Sequoyah and Watts Bar also do nothing to save the contention. As the Commission recently stated in analogous circumstances, "[l]icense amendment proceedings are not a forum 'only to litigate historical allegations' or past events with no direct bearing on the challenged licensing action." Dominion Nuclear Connecticut, Inc. (Millstone Nuclear Power Station, Units 2 and 3), CLI-01-24, 54 NRC 349, 366 (2001). Here, WTP has merely recited two past incidents and failed to establish any direct link between those incidents and the managers involved and the current challenged license amendments. Accordingly, contention 5 is inadmissible.

F. Contention 6

In its sixth and last contention, WTP claims that the NRC lacks legal authority to grant the TVA amendment requests. As the basis for its contention, WTP asserts that section 103 of the AEA, 42 U.S.C. § 2133 (1994), only authorizes the Commission to grant licenses for "industrial or commercial purposes," not defense activities -- the purpose of the amendments at issue. Further, it argues that 42 U.S.C. 7272, enacted as part of the Department of Energy National Security and Military Applications of Nuclear Energy Authorization Act of 1981, Pub. L. No. 96-540, § 210, 94 Stat. 3197, 3202 (1980), prohibits the NRC from expending appropriated funds "for any purpose related to licensing of any defense activity or facility of the Department of Energy." Finally, WTP argues that the agency's regulations also restrict NRC licensing authority to production or utilization facilities for industrial or commercial purposes. TVA and the Staff both argue that WTP's contention ignores subsequent legislation specifically

authorizing the production of tritium at Sequoyah and Watts Bar, so the contention is inadmissible for failing to raise a genuine dispute over a material issue of law or fact. See TVA Contention Response at 34-38; Staff WTP Contention Response at 15-16.

As TVA and the Staff correctly argue, contention 6 is inadmissible. In its contention, WTP primarily relies upon the prohibition enacted in 1980, 42 U.S.C. § 7272 (1994), barring the NRC from licensing defense-related activities. Absent from its issue statement and asserted bases, however, is any mention of the subsequently enacted National Defense Authorization Act for Fiscal Year 2000, Pub. L. No. 106-65, § 3134(a), 113 Stat. 512, 927 (1999) [hereinafter 2000 Act], providing that "[t]he 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 . . . ." Because DOE does not hold the licenses for the TVA reactors, it is necessarily implicit in the 2000 Act that NRC licensing action is required to accomplish the congressional direction. What is implicit in the 2000 Act, the House Armed Services Committee expressed explicitly in the House Report on its version of the legislation stating that:

> The committee notes that the Nuclear Regulatory Commission (NRC) will have to issue amended licenses to the Tennessee Valley Authority's Watts Bar and Sequoyah light water reactors, selected by the Secretary as the preferred facilities for tritium production. The committee understands that the NRC licensing process is often very lengthy and is concerned that delays in issuing amended licenses to the preferred tritium production facilities could jeopardize the ability of the Department to meet tritium requirements.

H. R. Rep. No. 106-162, at 493 (1999). See also H. R. Conf. Rep. No. 106-301, at 906-07 (1999). Thus, the 2000 Act and its legislative history clearly show that Congress intended for the NRC to entertain license amendment applications for the TVA reactors to produce tritium for DOE. Since the 1980 restriction on NRC activities contained in 42 U.S.C. § 7272 conflicts with the subsequently enacted section 3134(a) of the 2000 Act, the latter statute, even without a specific repealing clause, operates to repeal the earlier enactment to the extent of the conflict.

See 1A Norman J. Singer, Sutherland's Statutes and Statutory Construction § 23.9 (6th ed. 2002). Therefore, contrary to WTP's claim, the earlier congressional enactment no longer bars the NRC from granting the requested TVA amendments.

Similarly, nothing in sections 103 or 104 of the AEA authorizing the Commission to issue a license for a production or utilization facility for commercial or industrial purposes or the Commission's regulations implementing these provisions, 10 C.F.R. §§ 50.21 and 50.22, precludes the grant of the requested TVA amendments, if otherwise appropriate. The primary and controlling commercial and industrial purpose of the TVA reactors remains the same regardless of these amendments. The addition of an incidental and secondary function such as producing tritium for DOE does not change the principal commercial and industrial purpose of the Sequoyah and Watts Barr reactors to produce electricity for sale. Accordingly, WTP's contention fails to raise a genuine dispute over a material issue of law or fact as required by section 2.714(b)(2)(iii), and the contention is inadmissible.[11]

IV. Conclusion

For the foregoing reasons, the intervention petition of Mrs. Honicker is denied for lack of standing. The intervention petitions of BREDL and WTP are denied for failing to proffer at least one admissible contention as required by section 10 C.F.R. § 2.714(b)(1). Accordingly, the proceeding is terminated.

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[11]In the first paragraph of its contention filing, WTP also moves to dismiss TVA's license amendment requests, essentially repeating the issue statement of contention 6. Pursuant to 10 C.F.R. § 2.730(b), a motion must, inter alia, "state with particularity the grounds" for the motion. Needless to say, a four-sentence request to dismiss these license amendment applications without any legal or factual explanation fails to meet this basic requirement and, for this reason, the motion is denied. In any event, the motion lacks merit for the reasons that underlie the inadmissibility of the contention.

Pursuant to 10 C.F.R. § 2.714a, Petitioners each may appeal this decision to the Commission within ten (10) days of service of this Memorandum and Order on the questions whether their petitions to intervene should have been granted in whole or in part. The appeal shall be asserted by the filing of a notice of appeal and accompanying supporting brief.

It is so ORDERED.

THE ATOMIC SAFETY
AND LICENSING BOARD[12]

/RA/

Thomas S. Moore
ADMINISTRATIVE JUDGE

/RA/

Dr. Peter S. Lam
ADMINISTRATIVE JUDGE

/RA/

Dr. Thomas S. Elleman
ADMINISTRATIVE JUDGE

Rockville, Maryland

July 2, 2002

[12]Copies of this Memorandum and Order were sent this date by Internet e-mail transmission to (1) WTP; (2) BREDL; (3) Mrs. Honnicker; (4) TVA; and (5) the NRC Staff.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of	)	
	)	
TENNESSEE VALLEY AUTHORITY	)	Docket Nos. 50-327-OLA, 50-328-OLA,
	)	and 50-390-OLA
(Sequoyah Nuclear Plant, Units 1 & 2 and	)	
Watts Bar Nuclear Plant, Unit 1)	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB MEMORANDUM AND ORDER (RULING ON INTERVENTION PETITIONS) (LBP-02-14) have been served upon the following persons by U.S. mail, first class, or through NRC internal distribution.

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Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 2nd day of July 2002