

July 18, 2002

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

DOCKETED  
USNRC

July 24, 2002 (12:02PM)

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

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

RESPONSE OF TENNESSEE VALLEY AUTHORITY TO  
PROPOSED LATE-FILED AMENDED CONTENTION OF JEANNINE HONICKER

I. INTRODUCTION

On July 2, 2002, the Atomic Safety and Licensing Board (“Licensing Board”) denied all intervention petitions filed in this proceeding (by Petitioners Jeannine Honicker, Blue Ridge Environmental Defense League and We the People, Inc. (“WTP”)) and terminated the proceeding.<sup>1</sup> The Licensing Board specifically denied the intervention petition of Ms. Jeannine Honicker for lack of standing to intervene.<sup>2</sup> However, on July 3, 2002, a day after the Licensing Board’s decision, Petitioner Honicker submitted a late-filed “addendum” to one of her proposed contentions.<sup>3</sup> As discussed below, the addendum should not be considered and does not support a hearing in this

<sup>1</sup> See *Tenn. Valley Auth.* (Sequoyah Nuclear Plant, Units 1 & 2; Watts Bar Nuclear Plant, Unit 1), LBP-02-14, \_\_\_ NRC \_\_\_ (slip op., July 2, 2002) (“Licensing Board Decision”).

<sup>2</sup> *Id.* at 1.

<sup>3</sup> See “Addendum to Contentions of Jeannine Honicker” (July 3, 2002) (“Late-Filed Contention”). Although Tennessee Valley Authority (“TVA”) received this addendum via e-mail on July 3, 2002, it was not able to completely open the document. Accordingly, for purposes of calculating its response time TVA is considering the document to have been served by mail and is utilizing the additional five days for mail service permitted by 10 C.F.R. § 2.710.

matter. The addendum does not demonstrate standing to intervene in this proceeding. Moreover, even if it did, Petitioner has not demonstrated good cause for late-filing of a proposed contention, and has provided no basis for her newly proposed amended contention.

## II. DISCUSSION

### A. Petitioner Lacks Standing to Intervene, and Therefore the Amended Contention is Moot

Petitioner Honicker's proposed late-filed addendum should be rejected, if for no other reason than because the Licensing Board has already concluded that Ms. Honicker lacks standing to intervene in this proceeding.<sup>4</sup> The late-filed addendum does nothing to establish standing, whether in terms of the Petitioner's proximity to Watts Bar ("WBN") or Sequoyah ("SQN") or by way of discretionary intervention. The Licensing Board's previous rejection of Petitioner's standing was total and unequivocal. Accordingly, the Licensing Board did not even address the admissibility of Petitioner's proposed contentions. Petitioner in her newly proposed contention fails to address the Licensing Board's conclusion, and does not seek reconsideration of that conclusion. The issue of admissibility of both the previously proposed contentions and the addendum is therefore moot.<sup>5</sup>

### B. Petitioner Has Shown No Good Cause for Late-Filing, and Her Proposed Amended Contention Lacks Basis

#### 1. *Section 2.714(a)(1) Requirements Have Not Been Met*

By definition Petitioner's proposed amended contention is *per se* late-filed, being submitted not only nearly four months after the Licensing Board's original deadline for submission

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<sup>4</sup> Licensing Board Decision at 14.

<sup>5</sup> *See Tx. Utils. Elec. Co. (Comanche Peak Steam Electric Station, Unit 2)*, CLI-93-10, 37 NRC 192, 200 (1993) (holding that "[u]nless there is a substantial controversy 'admitting of specific relief through a decree of a conclusive character,' a case is moot.") (footnote omitted).

of contentions,<sup>6</sup> but after the entire proceeding has been terminated. Indeed, even the jurisdiction of the Licensing Board to rule at all upon Petitioner's filing at this time is questionable.<sup>7</sup> Even assuming jurisdiction, it would be incumbent upon the Petitioner to demonstrate good cause for her failure to timely file the proposed amended contention. Petitioner, however, has made no adequate showing.

Petitioner's primary rationale as to why good cause for late-filing exists is her putative lack of access, prior to filing her original proposed contentions, to the final environmental impact statement prepared by the Department of Energy in support of tritium production at TVA facilities.<sup>8</sup> However, this "inaccessibility" was apparently due entirely to a lack of effort by Petitioner Honicker and is insufficient to justify good cause for late-filing.<sup>9</sup> DOE/EIS-0288 was published in March 1999 and was publicly available long before the December 2001 notices of opportunity for a hearing on the TVA amendment applications were published in the *Federal Register* by the Nuclear Regulatory Commission ("NRC").<sup>10</sup> Further, the applications explicitly referenced DOE/EIS-0288 and its subsequent adoption by TVA (notice of which adoption was also

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<sup>6</sup> See *Tenn. Valley Auth.* (Sequoyah Nuclear Plant, Units 1 & 2; Watts Bar Nuclear Plant, Unit 1), "Memorandum and Order," slip op. at 2 (Feb. 7, 2002).

<sup>7</sup> See *Vt. Yankee Nuclear Power Corp.* (Vermont Yankee Nuclear Power Station), LBP-87-17, 25 NRC 838, 856 (1987), *aff'd in part on other grounds*, ALAB-869, 26 NRC 13 (1987) ("[I]f we were to reject all contentions at this time, . . . we would have to dismiss the petitioners and terminate the proceeding. We would lose our jurisdiction to consider late-filed contentions.") (footnote omitted).

<sup>8</sup> See Late-Filed Contention at 1 (*citing* DOE/EIS-0288, "Final Environmental Impact Statement for the Production of Tritium in a Commercial Light Water Reactor" (Mar. 1999) ("DOE/EIS-0288" or "EIS")).

<sup>9</sup> Indeed, DOE records indicate that both draft and final versions of DOE/EIS-0288 were mailed to Petitioner upon issuance (in August 1998 and March 1999, respectively).

<sup>10</sup> See "Tennessee Valley Authority; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing," 66 Fed. Reg. 65,000 and 65,005 (Dec. 17, 2001).

published in the *Federal Register*).<sup>11</sup> Petitioner thus had both ample notice of the availability and importance of DOE/EIS-0288, and had ample opportunity to timely obtain a copy and formulate any contentions based on information in that document. Her failure in this regard is fatal to any attempted showing of good cause for late-filing.<sup>12</sup>

More recently, Petitioner informed the Licensing Board on June 12, 2002, that she had obtained DOE/EIS-0288 and was considering submitting late-filed contentions.<sup>13</sup> At that time, Petitioner had already been served with the Licensing Board's June 7, 2002, Memorandum stating that a ruling on the intervention petitions would be issued by July 3, 2002.<sup>14</sup> Petitioner thus had at least three weeks in which to submit late-filed contentions after belatedly obtaining DOE/EIS-0288, knowing that a Licensing Board decision was forthcoming. Her mitigating claims of family illness, while unfortunate, cannot constitute good cause for late filing in light of Petitioner's failures to

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<sup>11</sup> See "Sequoyah Nuclear Plant (SQN) – Units 1 and 2 – Revision of 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) at E1-37; "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-00-015" (Aug. 20, 2001) at E1-33 (*both citing* "Issuance of Record of Decision and Adoption of Final Environmental Impact Statement for the Production of Tritium in a Commercial Light Water Reactor prepared by the U.S. Department of Energy (DOE)," 65 Fed. Reg. 26,259 (May 5, 2000)).

<sup>12</sup> See *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-01-13, 53 NRC 319, 324 (2001) (stating that determination of good cause is based on "(1) when was sufficient information reasonably available to support [a] late-filed contention; and (2) once the information was available, how long did it take for the contention . . . to be prepared and filed").

<sup>13</sup> See E-mail from Lee S. Dewey, Chief Counsel, ASLBP, to parties to TVA Proceeding (June 17, 2002), *attaching* E-mail correspondence between Jeannine Honicker and Sharon Parini, ASLBP (June 12, 2002).

<sup>14</sup> *Id.*

obtain DOE/EIS-0288 in the three years before the proceeding commenced and in light of a clear Licensing Board signal in June that time for any such filing was short.<sup>15</sup>

The Commission has unequivocally stated that where good cause for late-filing has not been established, a petitioner “must make a ‘compelling’ showing with respect to the other four [late-filing] factors [in Section 2.714(a)(1)].”<sup>16</sup> Petitioner has again fallen far short, offering only conclusory, *pro forma* statements in support of her untimely filing.<sup>17</sup> Further, the Licensing Board at least implicitly considered all of the late-filing factors (save good cause) in concluding that Petitioner should not be afforded discretionary intervention.<sup>18</sup> Because Petitioner has completely failed to justify the extremely late filing of her proposed addendum, the addendum should not be considered further.

## 2. *The Proposed Late-Filed Contention Lacks Basis*

As was the case with Petitioner’s earlier proposed contentions, her most recent submission also lacks any basis for admission to this proceeding. At bottom, Petitioner Honicker’s self-styled “Contention 2.A” is a rambling, broadly drawn attack on aspects of the methodology underlying DOE/EIS-0288. As the Licensing Board noted in rejecting a similar contention by

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<sup>15</sup> See *Duke Power Co.* (Catawba Nuclear Station, Units 1 and 2), CLI-83-19, 17 NRC 1041, 1048 (1983) (“While we are sympathetic with the fact that a party may have personal or other obligations . . . , this fact does not relieve that party of its hearing obligations. Thus, an intervenor in an NRC proceeding must be taken as having accepted the obligation of uncovering information in publicly available documentary material.”) (citation omitted).

<sup>16</sup> See *Commonwealth Edison Co.* (Braidwood Nuclear Power Station, Units 1 and 2), CLI-86-8, 23 NRC 241, 244 (1986) (citation omitted).

<sup>17</sup> For instance, with regard to broadening the hearing, Petitioner offers to designate her new contention as an addendum to her original Contention 2, rather than as an entirely new contention. See Late-Filed Contention at 2. This offer elevates style over substance, however, as by any measure proffering a new contention on a previously unchallenged document cannot help but to broaden a subject hearing (terminated or otherwise).

<sup>18</sup> See Licensing Board Decision at 13 (listing factors to be weighed regarding discretionary intervention).

Petitioner WTP, simply attacking the use of dose or release modeling without explaining how the applicant's approach is deficient or in violation of NRC regulations is not sufficient to provide the basis for an admissible contention.<sup>19</sup> Further, as TVA discusses below, none of its six subparts contains a sufficient basis to be admissible in this proceeding pursuant to Section 2.714(b)(2).

#### Contention 2.A.1

This subpart cites a number of provisions of DOE/EIS-0288 to the effect that because DOE's assumption therein — that only 1 curie of tritium from each tritium-producing burnable absorber rod ("TPBAR") could permeate to the reactor coolant — is an "unproven assumption" rather than a stated fact, this "negates all dose calculations based on this assumption."<sup>20</sup> Petitioner offers no basis for these assertions and is, indeed, incorrect in the assertion that DOE/EIS-0288 relies on a mere "assumption."

As explained in the DOE Technical Report submitted to the NRC prior to agency approval in 1997 of TVA's application for a license amendment authorizing it to irradiate lead test assemblies in WBN, the TPBAR design is based on extensive tests performed over a ten-year period (1982-1992) in the Advanced Test Reactor at the Idaho National Engineering and Environmental Laboratory. Experience and data resulting from these tests were used as the starting point for the TPBAR design. Petitioner has not acknowledged awareness of this testing, much less substantively challenged the testing or shown that it was performed incorrectly or in violation of NRC regulations. There is thus no basis for this contention and, pursuant to Section 2.714(b)(2), it cannot be admitted.

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<sup>19</sup> Licensing Board Decision at 19.

<sup>20</sup> Late-Filed Contention at 2-5.

### Contention 2.A.2

Petitioner claims in this subpart that DOE/EIS-0288 impermissibly ignored the prior deposit of radionuclides in stating that, when determining radiological impacts from normal operations, “[g]round surfaces were assumed to have no previous deposition of radionuclides.”<sup>21</sup>

This contention is unfounded. DOE/EIS-0288 quite naturally focused on environmental impacts associated with the proposed action — not on existing environmental conditions. There is no legal basis provided for the premise of the proposed contention. Moreover, contrary to Petitioner’s assertions, Sections 4.2.1.9, 4.2.2.9 and 4.2.3.9 of the EIS discuss the radiological impacts associated with existing radionuclides in the environment in connection with the discussion of the “no action” alternative. At bottom, there is no relief that Petitioner can be granted pursuant to this proposed contention. 10 C.F.R. § 2.714(d)(2)(ii).

### Contention 2.A.3

This subpart incorrectly asserts that the EIS’s description of annual doses to maximally exposed individuals and the surrounding population ignores the cumulative effect of such doses over a forty-year period.<sup>22</sup> This proposed contention lacks basis.

As shown in EIS Sections 5.2.1.9.1, 5.2.2.9.1 and 5.2.3.9.1, the annual dose to the maximally-exposed individual (given the presence of 3,400 TPBARs in the reactor core) was determined to be a maximum of 0.34 millirem (“mrem”). The cumulative dose of such exposure over a forty-year period can be calculated using simple mathematics (0.34 mrem x 40 years = 13.6 mrem, an insignificant dose). The depiction in the EIS of doses and risk in terms of annual impacts was done only as a matter of convenience. Petitioner has not challenged these calculations or explained how they are incorrect or contrary to NRC regulation. As a result, this portion of the late-

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<sup>21</sup> Late-Filed Contention at 5 (*citing* DOE/EIS-0288 at C-15).

<sup>22</sup> Late-Filed Contention at 5-6.

filed contention is without basis. Moreover, there is no relief available to Petitioner even if the contention were to be admitted. The contention is thus also inadmissible pursuant to Section 2.714(d)(2)(ii).

#### Contention 2.A.4

Petitioner in this subpart claims that dose calculations in the EIS are somehow invalidated by being based on an exposed human adult rather than on human embryos or minor children.<sup>23</sup> Petitioner has, however, incorrectly interpreted the cited statement in the EIS, based on an apparently less-than-thorough reading of the document.

As described in EIS Section C.2.1.2, health effects of exposure to ionizing radiation were determined using a report entitled “Health Effects of Exposure to Low Levels of Ionizing Radiation,” BEIR V (NAS 1990) (“BEIR V”). That report utilizes models that in part express risk as a function of age at exposure. Consequently, BEIR V takes into account the age of the person receiving a radiation dose, and the risk assessment accounts for both adults and children. The assumption made in the cited portion of the EIS — that “[t]he exposed individual or population was assumed to have the characteristics and habits (*e.g.*, inhalation and ingestion rates) of an adult human” — is a conservative assumption, because an adult human is assumed to have greater inhalation and ingestion rates than a child, and thus would receive a greater exposure to radiation. Petitioner has completely ignored this explanation in the EIS, and does not substantively challenge the basis of the stated assumption. This contention therefore lacks basis and cannot be admitted.

#### Contention 2.A.5

This lengthy subpart comprises an unsupported attack on the assumption in the EIS that, with regard to normal operations, during a 40-year operation two TPBARs could fail during a

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<sup>23</sup> Late-Filed Contention at 6 (*citing* DOE/EIS-0288 at C-16). In fact, Petitioner’s page citation is incorrect; the complained-of statement is located on page C-15.

18-month operating cycle and release their tritium inventory into the reactor coolant system.<sup>24</sup> Petitioner has failed, however, to comprehend that Section 1.9 of the EIS clearly explains both the rationale underlying this assumption and the corresponding unlikelihood of its occurrence. Petitioner has not challenged the stated explanation for the cited assumption or shown how it is in violation of any NRC regulatory requirement. This contention, therefore, is without basis and inadmissible.

#### Contention 2.A.6

This final subpart of Petitioner's proposed late-filed contention is, at bottom, an impermissible challenge to NRC regulations that describe a 10-mile Emergency Planning Zone ("EPZ") around nuclear power plants within which individuals are to be evacuated under certain circumstances.<sup>25</sup> As the Licensing Board explained in its decision rejecting all intervention petitions in this proceeding, one "long-established principle[] of NRC adjudication" is that such challenges may never serve as the basis for an admissible contention.<sup>26</sup> Accordingly, Petitioner's attack on the EIS by way of an attack on NRC regulation cannot be admitted.

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<sup>24</sup> Late-Filed Contention at 6 (*citing* DOE/EIS-0288 at C-20).

<sup>25</sup> *See* Appendix E to 10 C.F.R. Part 50.

<sup>26</sup> *See* Licensing Board Decision at 16 ("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.") (citations omitted).

III. CONCLUSION

For the reasons stated above, Petitioner's proposed late-filed amended contention should not be considered and cannot be admitted. Petitioner's dismissal from this proceeding for lack of standing should be reaffirmed.

Respectfully submitted,



David A. Repka  
L. Michael Rafky  
WINSTON & STRAWN  
1400 L Street, NW  
Washington, D.C. 20005-3502  
Telephone: (202) 371-5700

Edward J. Vigluicci  
Harriet A. Cooper  
TENNESSEE VALLEY AUTHORITY  
400 West Summit Hill Drive  
Knoxville, TN 37902-1499  
Telephone: (865) 632-7317

Counsel for Tennessee Valley Authority

Dated in Washington, D.C.  
this 18<sup>th</sup> day of July, 2002

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

CERTIFICATE OF SERVICE

I hereby certify that copies of "RESPONSE OF TENNESSEE VALLEY AUTHORITY TO PROPOSED LATE-FILED AMENDED CONTENTION OF JEANNINE HONICKER," in the captioned proceeding, have been served on the following by deposit in the United States mail, first class, this 18<sup>th</sup> day of July 2002. Additional e-mail service has been made this same day as shown below. For the party marked by an asterisk (\*) additional service has been made by overnight delivery due to lack of either e-mail or facsimile.

Thomas S. Moore, Chair  
Atomic Safety and Licensing Board Panel  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555-0001  
(e-mail: tsm2@nrc.gov)

Dr. Peter S. Lam  
Atomic Safety and Licensing Board Panel  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555-0001  
(e-mail: psl@nrc.gov)

Dr. Thomas S. Elleman  
Atomic Safety and Licensing Board Panel  
704 Davidson Street  
Raleigh, NC 27609  
(e-mail: elleman@eos.ncsu.edu)

Office of the Secretary  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555  
Attn: Rulemakings and Adjudications Staff  
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Office of Commission Appellate  
Adjudication  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

Adjudicatory File  
Atomic Safety and Licensing Board Panel  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

Steven R. Hom  
Office of the General Counsel  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555  
(e-mail: srh@nrc.gov)

Jared K. Heck  
Office of the General Counsel  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555  
(e-mail: jkh3@nrc.gov)

Donald J. Moniak  
Blue Ridge Environmental Defense League  
P.O. Box 3487  
Aiken, SC 29802  
(e-mail: donmoniak@earthlink.net)

Ann Pickel Harris, Director \*  
We The People, Inc.  
341 Swing Loop Road  
Rockwood, TN 37854

Jeannine Honicker  
704 Camellia Drive  
LaGrange, GA 30240  
(e-mail: djhonicker@msn.com)

A handwritten signature in black ink that reads "David A. Repka". The signature is written in a cursive style and is positioned above a solid horizontal line.

David A. Repka  
Winston & Strawn  
Counsel for Tennessee Valley Authority